

ENERGY TAX POLICY ACT OF 2001

JULY 24, 2001.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 2511]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2511) to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage energy conservation, energy reliability, and energy production, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

- (a) **SHORT TITLE.**—This Act may be cited as the “Energy Tax Policy Act of 2001”.
- (b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.
- (c) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

TITLE I—CONSERVATION

- Sec. 101. Credit for residential solar energy property.
- Sec. 102. Extension and expansion of credit for electricity produced from renewable resources.
- Sec. 103. Credit for qualified stationary fuel cell powerplants.
- Sec. 104. Alternative motor vehicle credit.
- Sec. 105. Extension of deduction for certain refueling property.
- Sec. 106. Modification of credit for qualified electric vehicles.
- Sec. 107. Tax credit for energy efficient appliances.
- Sec. 108. Credit for energy efficiency improvements to existing homes.
- Sec. 109. Business credit for construction of new energy efficient home.
- Sec. 110. Allowance of deduction for energy efficient commercial building property.
- Sec. 111. Allowance of deduction for qualified energy management devices and retrofitted qualified meters.
- Sec. 112. 3-year applicable recovery period for depreciation of qualified energy management devices.
- Sec. 113. Energy credit for combined heat and power system property.
- Sec. 114. New nonrefundable personal credits allowed against regular and minimum taxes.
- Sec. 115. Phaseout of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
- Sec. 116. Reduced motor fuel excise tax on certain mixtures of diesel fuel.
- Sec. 117. Credit for investment in qualifying advanced clean coal technology.
- Sec. 118. Credit for production from qualifying advanced clean coal technology.

TITLE II—RELIABILITY

- Sec. 201. Natural gas gathering lines treated as 7-year property.
- Sec. 202. Natural gas distribution lines treated as 10-year property.
- Sec. 203. Petroleum refining property treated as 7-year property.
- Sec. 204. Expensing of capital costs incurred in complying with environmental protection agency sulfur regulations.
- Sec. 205. Environmental tax credit.
- Sec. 206. Determination of small refiner exception to oil depletion deduction.
- Sec. 207. Tax-exempt bond financing of certain electric facilities.
- Sec. 208. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.
- Sec. 209. Distributions of stock to implement Federal Energy Regulatory Commission or State electric restructuring policy.
- Sec. 210. Modifications to special rules for nuclear decommissioning costs.
- Sec. 211. Treatment of certain income of cooperatives.
- Sec. 212. Repeal of requirement of certain approved terminals to offer dyed diesel fuel and kerosene for non-taxable purposes.
- Sec. 213. Arbitrage rules not to apply to prepayments for natural gas.

TITLE III—PRODUCTION

- Sec. 301. Oil and gas from marginal wells.
- Sec. 302. Temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production.
- Sec. 303. Deduction for delay rental payments.
- Sec. 304. Election to expense geological and geophysical expenditures.
- Sec. 305. 5-year net operating loss carryback for losses attributable to operating mineral interests of oil and gas producers.
- Sec. 306. Extension and modification of credit for producing fuel from a nonconventional source.
- Sec. 307. Business related energy credits allowed against regular and minimum tax.
- Sec. 308. Temporary repeal of alternative minimum tax preference for intangible drilling costs.
- Sec. 309. Allowance of enhanced recovery credit against the alternative minimum tax.
- Sec. 310. Extension of certain benefits for energy-related businesses on Indian reservations.

TITLE I—CONSERVATION

SEC. 101. CREDIT FOR RESIDENTIAL SOLAR ENERGY PROPERTY.

(a) **IN GENERAL.**—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

“SEC. 25C. RESIDENTIAL SOLAR ENERGY PROPERTY.

“(a) **ALLOWANCE OF CREDIT.**—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

“(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year, and

“(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year.

“(b) LIMITATIONS.—

“(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

“(A) \$2,000 for each system of property described in subsection (c)(1), and

“(B) \$2,000 for each system of property described in subsection (c)(2).

“(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

“(A) in the case of solar water heating equipment, such equipment is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed, and

“(B) in the case of a photovoltaic system, such system meets appropriate fire and electric code requirements.

“(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

“(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(B) the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 25E) and section 27 for the taxable year.

“(c) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term ‘qualified solar water heating property expenditure’ means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun.

“(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term ‘qualified photovoltaic property expenditure’ means an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit.

“(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

“(4) LABOR COSTS.—Expenditures for labor costs properly allocable to the on-site preparation, assembly, or original installation of the property described in paragraph (1) or (2) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

“(5) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

“(d) SPECIAL RULES.—

“(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

“(A) The amount of the credit allowable under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

“(B) There shall be allowable with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

“(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder’s proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

“(3) CONDOMINIUMS.—

“(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which

he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

“(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term ‘condominium management association’ means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

“(4) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

“(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

“(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

“(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

“(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken in to account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(A)).

“(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

“(f) TERMINATION.—The credit allowed under this section shall not apply to taxable years beginning after December 31, 2006 (December 31, 2008, with respect to qualified photovoltaic property expenditures).”.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 1016 is amended by striking “and” at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting “, and”, and by adding at the end the following new paragraph:

“(29) to the extent provided in section 25C(e), in the case of amounts with respect to which a credit has been allowed under section 25C.”.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

“Sec. 25C. Residential solar energy property.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2001.

SEC. 102. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM RENEWABLE RESOURCES.

(a) EXTENSION OF CREDIT FOR WIND AND CLOSED-LOOP BIOMASS FACILITIES.—Subparagraphs (A) and (B) of section 45(c)(3) are each amended by striking “2002” and inserting “2007”.

(b) EXPANSION OF CREDIT FOR OPEN-LOOP BIOMASS AND LANDFILL GAS FACILITIES.—Paragraph (3) of section 45(c) is amended by adding at the end the following new subparagraphs:

“(D) OPEN-LOOP BIOMASS FACILITIES.—In the case of a facility using open-loop biomass to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

“(E) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.”.

(c) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraphs:

“(5) OPEN-LOOP BIOMASS.—The term ‘open-loop biomass’ means any solid, non-hazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

“(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, but not including old-growth timber,

“(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled, or

“(C) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.
Such term shall not include closed-loop biomass.

“(6) REDUCED CREDIT FOR CERTAIN PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (D) or (E) of paragraph (3) which is placed in service before the date of the enactment of this subparagraph—

“(A) subsection (a)(1) shall be applied by substituting ‘1.0 cents’ for ‘1.5 cents’, and

“(B) the 5-year period beginning on the date of the enactment of this paragraph shall be substituted in lieu of the 10-year period in subsection (a)(2)(A)(ii).

“(7) LIMIT ON REDUCTIONS FOR GRANTS, ETC., FOR OPEN-LOOP BIOMASS FACILITIES.—If the amount of the credit determined under subsection (a) with respect to any open-loop biomass facility is required to be reduced under paragraph (3) of subsection (b), the fraction under such paragraph shall in no event be greater than $\frac{4}{5}$.

“(8) COORDINATION WITH SECTION 29.—The term ‘qualified facility’ shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act.

SEC. 103. CREDIT FOR QUALIFIED STATIONARY FUEL CELL POWERPLANTS.

(a) BUSINESS PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking “or” at the end of clause (i), by adding “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) equipment which is part of a qualified stationary fuel cell powerplant.”.

(2) QUALIFIED STATIONARY FUEL CELL POWERPLANT.—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

“(4) QUALIFIED STATIONARY FUEL CELL POWERPLANT.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘qualified stationary fuel cell powerplant’ means a stationary fuel cell power plant that has an electricity-only generation efficiency greater than 30 percent.

“(B) LIMITATION.—In the case of qualified stationary fuel cell powerplant placed in service during the taxable year, the credit under subsection (a) for such year may not exceed \$1,000 for each kilowatt of capacity.

“(C) STATIONARY FUEL CELL POWER PLANT.—The term ‘stationary fuel cell power plant’ means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

“(D) TERMINATION.—Such term shall not include any property placed in service after December 31, 2006.”

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2001, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(b) NONBUSINESS PROPERTY.—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25C the following new section:

“SEC. 25D. NONBUSINESS QUALIFIED STATIONARY FUEL CELL POWERPLANT.

“(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the qualified stationary fuel cell powerplant expenditures which are paid or incurred during such year.

“(b) LIMITATIONS.—

“(1) IN GENERAL.—The credit allowed under subsection (a) for the taxable year and all prior taxable years shall not exceed \$1,000 for each kilowatt of capacity.

“(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

“(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(B) the sum of the credits allowable under this subpart (other than this section and sections 23 and 25E) and section 27 for the taxable year.

“(c) QUALIFIED STATIONARY FUEL CELL POWERPLANT EXPENDITURES.—For purposes of this section, the term ‘qualified stationary fuel cell powerplant expenditures’ means expenditures by the taxpayer for any qualified stationary fuel cell powerplant (as defined in section 48(a)(4))—

“(1) which meets the requirements of subparagraphs (B) and (D) of section 48(a)(3), and

“(2) which is installed on or in connection with a dwelling unit—

“(A) which is located in the United States, and

“(B) which is used by the taxpayer as a residence.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

“(d) SPECIAL RULES.—For purposes of this section, rules similar to the rules of section 25C(d) shall apply.

“(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

“(f) TERMINATION.—This section shall not apply to any expenditure made after December 31, 2006.”

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 1016 is amended by striking “and” at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting “, and”, and by adding at the end the following new paragraph: “(30) to the extent provided in section 25D(e), in the case of amounts with respect to which a credit has been allowed under section 25D.”

(B) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25C the following new item:

“Sec. 25D. Nonbusiness qualified stationary fuel cell powerplant.”

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred after December 31, 2001.

SEC. 104. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following:

“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

“(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

“(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

“(2) the new qualified hybrid motor vehicle credit determined under subsection (c),

“(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d), and

“(4) the advanced lean burn technology motor vehicle credit determined under subsection (e).

“(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

“(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

“(A) \$4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

“(B) \$10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

“(C) \$20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

“(D) \$40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

“(2) INCREASE FOR FUEL EFFICIENCY.—

“(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

“(i) \$1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

“(ii) \$1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

“(iii) \$2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

“(iv) \$2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy,

“(v) \$3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy,

“(vi) \$3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2000 model year city fuel economy, and

“(vii) \$4,000, if such vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

“(B) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2000 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

“(i) In the case of a passenger automobile:

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 or 8,500 lbs	11.1 mpg.

“(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 or 8,500 lbs	12.0 mpg.

“(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term ‘vehicle inertia weight class’ has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

“(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term ‘new qualified fuel cell motor vehicle’ means a motor vehicle—

“(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

“(B) which, in the case of a passenger automobile or light truck—

“(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

“(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

“(C) the original use of which commences with the taxpayer,

“(D) which is acquired for use or lease by the taxpayer and not for resale, and

“(E) which is made by a manufacturer.

“(c) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

“(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

“(2) CREDIT AMOUNT.—

“(A) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following tables:

“(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which provides the following percentage of the maximum available power:

“If percentage of the maximum available power The credit amount is:

is:	
At least 2.5 percent but less than 10 percent	\$250
At least 10 percent but less than 20 percent	\$500
At least 20 percent but less than 30 percent	\$750
At least 30 percent	\$1,000.

“(ii) In the case of a new qualified hybrid motor vehicle which is a heavy duty hybrid motor vehicle and which provides the following percentage of the maximum available power:

“(I) If such vehicle has a gross vehicle weight rating of not more than 14,000 pounds:

“If percentage of the maximum available power The credit amount is:

is:	
At least 20 percent but less than 30 percent	\$1,500
At least 30 percent but less than 40 percent	\$1,750
At least 40 percent but less than 50 percent	\$2,000
At least 50 percent but less than 60 percent	\$2,250
At least 60 percent	\$2,500.

“(II) If such vehicle has a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds:

“If percentage of the maximum available power The credit amount is:

is:	
At least 20 percent but less than 30 percent	\$4,000
At least 30 percent but less than 40 percent	\$4,500
At least 40 percent but less than 50 percent	\$5,000
At least 50 percent but less than 60 percent	\$5,500
At least 60 percent	\$6,000.

“(III) If such vehicle has a gross vehicle weight rating of more than 26,000 pounds:

“If percentage of the maximum available power The credit amount is:

is:	
At least 20 percent but less than 30 percent	\$6,000
At least 30 percent but less than 40 percent	\$7,000
At least 40 percent but less than 50 percent	\$8,000
At least 50 percent but less than 60 percent	\$9,000
At least 60 percent	\$10,000.

“(B) INCREASE FOR FUEL EFFICIENCY.—

“(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a passenger automobile or light truck shall be increased by—

“(I) \$1,000, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

“(II) \$1,500, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

“(III) \$2,000, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

“(IV) \$2,500, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

“(V) \$3,000, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

“(VI) \$3,500, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

“(ii) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

“(iii) OPTION TO USE LIKE VEHICLE.—For purposes of clause (i), at the option of the vehicle manufacturer, the increase for fuel efficiency may be calculated by comparing the new qualified hybrid motor vehicle to a ‘like vehicle’.

“(C) INCREASE FOR ACCELERATED EMISSIONS PERFORMANCE.—The amount determined under subparagraph (A)(ii) with respect to an applicable heavy duty hybrid motor vehicle shall be increased by the increase credit amount determined in accordance with the following tables:

“(i) In the case of a vehicle which has a gross vehicle weight rating of not more than 14,000 pounds:

“If the model year is:	The increase credit amount is:	
2002	\$3,500
2003	\$3,000
2004	\$2,500
2005	\$2,000
2006	\$1,500.

“(ii) In the case of a vehicle which has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds:

“If the model year is:	The increase credit amount is:	
2002	\$9,000
2003	\$7,750
2004	\$6,500
2005	\$5,250
2006	\$4,000.

“(iii) In the case of a vehicle which has a gross vehicle weight rating of more than 26,000 pounds:

“If the model year is:	The increase credit amount is:	
2002	\$14,000
2003	\$12,000
2004	\$10,000
2005	\$8,000
2006	\$6,000.

“(D) CONSERVATION CREDIT.—

“(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a passenger automobile or light truck shall be increased by—

“(I) \$250, if such vehicle achieves a lifetime fuel savings of at least 1,500 gallons of gasoline, and

“(II) \$500, if such vehicle achieves a lifetime fuel savings of at least 2,500 gallons of gasoline.

“(ii) LIFETIME FUEL SAVINGS FOR LIKE VEHICLE.—For purposes of clause (i), at the option of the vehicle manufacturer, the lifetime fuel savings fuel may be calculated by comparing the new qualified hybrid motor vehicle to a ‘like vehicle’.

“(E) DEFINITIONS.—

“(i) APPLICABLE HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (C), the term ‘applicable heavy duty hybrid motor vehicle’ means a heavy duty hybrid motor vehicle which is powered by an internal combustion or heat engine which is certified as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2007 and later model year diesel heavy duty engines or 2008 and later model year ottocycle heavy duty engines, as applicable.

“(ii) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of this paragraph, the term ‘heavy duty hybrid motor vehicle’ means a new qualified hybrid motor vehicle which has a gross vehicle weight rating of more than 10,000 pounds and draws propulsion energy from both of the following onboard sources of stored energy:

“(I) An internal combustion or heat engine using consumable fuel which, for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds a level of not greater than 3.0 grams per brake horsepower-hour of oxides of nitrogen and 0.01 per brake horsepower-hour of particulate matter.

“(II) A rechargeable energy storage system.

“(iii) MAXIMUM AVAILABLE POWER.—

“(I) PASSENGER AUTOMOBILE OR LIGHT TRUCK.—For purposes of subparagraph (A)(i), the term ‘maximum available power’ means the maximum power available from the battery or other electrical storage device, during a standard 10 second pulse power test, di-

vided by the sum of the battery or other electrical storage device and the SAE net power of the heat engine.

“(II) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (A)(ii), the term ‘maximum available power’ means the maximum power available from the battery or other electrical storage device, during a standard 10 second pulse power test, divided by the vehicle’s total traction power. The term ‘total traction power’ means the sum of the electric motor peak power and the heat engine peak power of the vehicle, except that if the electric motor is the sole means by which the vehicle can be driven, the total traction power is the peak electric motor power.

“(iv) LIKE VEHICLE.—For purposes of subparagraph (B)(iii), the term ‘like vehicle’ for a new qualified hybrid motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

“(I) Body style (2-door or 4-door).

“(II) Transmission (automatic or manual).

“(III) Acceleration performance (± 0.05 seconds).

“(IV) Drivetrain (2-wheel drive or 4-wheel drive).

“(V) Certification by the Administrator of the Environmental Protection Agency.

“(v) LIFETIME FUEL SAVINGS.—For purposes of subsection (c)(2)(D), the term ‘lifetime fuel savings’ shall be calculated by dividing 120,000 by the difference between the 2000 model year city fuel economy for the vehicle inertia weight class and the city fuel economy for the new qualified hybrid motor vehicle.

“(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection, the term ‘new qualified hybrid motor vehicle’ means a motor vehicle—

“(A) which draws propulsion energy from onboard sources of stored energy which are both—

“(i) an internal combustion or heat engine using combustible fuel, and

“(ii) a rechargeable energy storage system,

“(B) which, in the case of a passenger automobile or light truck, for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year,

“(C) the original use of which commences with the taxpayer,

“(D) which is acquired for use or lease by the taxpayer and not for resale, and

“(E) which is made by a manufacturer.

“(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

“(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

“(A) 50 percent, plus

“(B) 30 percent, if such vehicle—

“(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

“(ii) has received an order from an applicable State certifying the vehicle for sale or lease in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

“(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer’s suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

“(A) \$5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

“(B) \$10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

“(C) \$25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

“(D) \$40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

“(4) QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE DEFINED.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘qualified alternative fuel motor vehicle’ means any motor vehicle—

“(i) which is only capable of operating on an alternative fuel,

“(ii) the original use of which commences with the taxpayer,

“(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

“(iv) which is made by a manufacturer.

“(B) ALTERNATIVE FUEL.—The term ‘alternative fuel’ means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

“(5) CREDIT FOR MIXED-FUEL VEHICLES.—

“(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

“(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

“(ii) in the case of a 95/5 mixed-fuel vehicle, 95 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

“(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘mixed-fuel vehicle’ means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

“(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

“(ii) either—

“(I) has received a certificate of conformity under the Clean Air Act, or

“(II) has received an order from an applicable State certifying the vehicle for sale or lease in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

“(iii) the original use of which commences with the taxpayer,

“(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

“(v) which is made by a manufacturer.

“(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘75/25 mixed-fuel vehicle’ means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

“(D) 95/5 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘95/5 mixed-fuel vehicle’ means a mixed-fuel vehicle which operates using at least 95 percent alternative fuel and not more than 5 percent petroleum-based fuel.

“(e) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

“(1) IN GENERAL.—For purposes of subsection (a), the advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new qualified advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

“(2) CREDIT AMOUNT.—

“(A) INCREASE FOR FUEL EFFICIENCY.—The credit amount determined under this paragraph shall be—

“(i) \$1,000, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

“(ii) \$1,500, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

“(iii) \$2,000, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

“(iv) \$2,500, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

“(v) \$3,000, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

“(vi) \$3,500, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

“(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to an advanced lean burn technology motor vehicle shall be increased by—

“(i) \$250, if such vehicle achieves a lifetime fuel savings of at least 1,500 gallons of gasoline, and

“(ii) \$500, if such vehicle achieves a lifetime fuel savings of at least 2,500 gallons of gasoline.

“(C) OPTION TO USE LIKE VEHICLE.—At the option of the vehicle manufacturer, the increase for fuel efficiency and conservation credit may be calculated by comparing the new advanced lean-burn technology motor vehicle to a like vehicle.

“(3) DEFINITIONS.—For purposes of this subsection.—

“(A) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—The term ‘advanced lean burn technology motor vehicle’ means a motor vehicle with an internal combustion engine that—

“(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

“(ii) incorporates direct injection,

“(iii) achieves at least 125 percent of the 2000 model year city fuel economy, and

“(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5, Tier 2 emission levels (for passenger vehicles) or Bin 8, Tier 2 emission levels (for light trucks) established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle.

“(B) LIKE VEHICLE.—The term ‘like vehicle’ for an advanced lean burn technology motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

“(i) Body style (2-door or 4-door),

“(ii) Transmission (automatic or manual),

“(iii) Acceleration performance (± 0.05 seconds).

“(iv) Drivetrain (2-wheel drive or 4-wheel drive).

“(v) Certification by the Administrator of the Environmental Protection Agency.

“(C) LIFETIME FUEL SAVINGS.—The term ‘lifetime fuel savings’ shall be calculated by dividing 120,000 by the difference between the 2000 model year city fuel economy for the vehicle inertia weight class and the city fuel economy for the new qualified hybrid motor vehicle.

“(f) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

“(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(2) the sum of the credits allowable under subpart A and sections 27, 29, and 30A for the taxable year.

“(g) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) CONSUMABLE FUEL.—The term ‘consumable fuel’ means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

“(2) MOTOR VEHICLE.—The term ‘motor vehicle’ has the meaning given such term by section 30(c)(2).

“(3) 2000 MODEL YEAR CITY FUEL ECONOMY.—The 2000 model year city fuel economy with respect to any vehicle shall be measured under rules similar to the rules under section 4064(c).

“(4) OTHER TERMS.—The terms ‘automobile’, ‘passenger automobile’, ‘light truck’, and ‘manufacturer’ have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

“(5) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

“(6) NO DOUBLE BENEFIT.—The amount of any deduction or credit allowable under this chapter (other than the credit allowable under this section)—

“(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (d) shall be reduced by the amount of such credit attributable to such cost, and

“(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

“(7) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any sale or lease document the specific amount of any credit otherwise allowable to the entity under this section and reduces the sale or lease price of such vehicle by an equivalent amount of such credit.

“(8) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

“(9) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

“(10) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

“(11) CARRYFORWARD ALLOWED.—

“(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (f) for such taxable year (referred to as the ‘unused credit year’ in this paragraph), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

“(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under subparagraph (A).

“(12) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

“(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

“(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

“(h) REGULATIONS.—

“(1) IN GENERAL.—The Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

“(2) ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency, in coordination with the Secretary of Transportation and the Secretary of the Treasury, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

“(i) TERMINATION.—This section shall not apply to any property placed in service after—

“(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2011, and

“(2) in the case of any other property, December 31, 2007.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking “and” at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting “, and”, and by adding at the end the following:

“(31) to the extent provided in section 30B(g)(5).”.

(2) Section 6501(m) is amended by inserting “30B(g)(10),” after “30(d)(4),”.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following:

“Sec. 30B. Alternative motor vehicle credit.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after December 31, 2001, in taxable years ending after such date.

SEC. 105. EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.

(a) **IN GENERAL.**—Section 179A(f) (relating to termination) is amended by striking “2004” and inserting “2007”.

(b) **MODIFICATION OF PHASEOUT.**—Subparagraph (B) of section 179A(b)(1) is amended—

- (1) in clause (i), by striking “2002” and inserting “2005”,
- (2) in clause (ii), by striking “2003” and inserting “2006”, and
- (3) in clause (iii), by striking “2004” and inserting “2007”.

SEC. 106. MODIFICATION OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) **AMOUNT OF CREDIT.**—

(1) **IN GENERAL.**—Section 30(a) (relating to allowance of credit) is amended by striking “10 percent of”.

(2) **LIMITATION OF CREDIT ACCORDING TO TYPE OF VEHICLE.**—Section 30(b) (relating to limitations) is amended—

(A) by striking paragraphs (1) and (2) and inserting the following:

“(1) **LIMITATION ACCORDING TO TYPE OF VEHICLE.**—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed the greatest of the following amounts applicable to such vehicle:

“(A) In the case of a vehicle which conforms to the Motor Vehicle Safety Standard 500 prescribed by the Secretary of Transportation, the lesser of—

“(i) 10 percent of the manufacturer’s suggested retail price of the vehicle, or

“(ii) \$4,000.

“(B) In the case of a vehicle not described in subparagraph (A) with a gross vehicle weight rating not exceeding 8,500 pounds—

“(i) \$4,000, or

“(ii) \$5,000, if such vehicle is—

“(I) capable of a driving range of at least 70 miles on a single charge of the vehicle’s rechargeable batteries and measured pursuant to the urban dynamometer schedules under appendix I to part 86 of title 40, Code of Federal Regulations, or

“(II) capable of a payload capacity of at least 1,000 pounds.

“(C) In the case of a vehicle with a gross vehicle weight rating exceeding 8,500 pounds but not exceeding 14,000 pounds, \$10,000.

“(D) In the case of a vehicle with a gross vehicle weight rating exceeding 14,000 pounds but not exceeding 26,000 pounds, \$20,000.

“(E) In the case of a vehicle with a gross vehicle weight rating exceeding 26,000 pounds, \$40,000.”, and

(B) by redesignating paragraph (3) as paragraph (2).

(3) **CONFORMING AMENDMENTS.**—

(A) Section 53(d)(1)(B)(iii) is amended by striking “section 30(b)(3)(B)” and inserting “section 30(b)(2)(B)”.

(B) Section 55(c)(2) is amended by striking “30(b)(3)” and inserting “30(b)(2)”.

(b) **QUALIFIED BATTERY ELECTRIC VEHICLE.**—

(1) **IN GENERAL.**—Section 30(c)(1)(A) (defining qualified electric vehicle) is amended to read as follows:

“(A) which is—

“(i) operated solely by use of a battery or battery pack, or

“(ii) powered primarily through the use of an electric battery or battery pack using a flywheel or capacitor which stores energy produced by an electric motor through regenerative braking to assist in vehicle operation.”.

(2) **LEASED VEHICLES.**—Section 30(c)(1)(C) is amended by inserting “or lease” after “use”.

(3) **CONFORMING AMENDMENTS.**—

(A) Subsections (a) and (c) of section 30 are each amended by inserting “battery” after “qualified” each place it appears.

(B) The heading of subsection (c) of section 30 is amended by inserting “BATTERY” after “QUALIFIED”.

(C) The heading of section 30 is amended by inserting “battery” after “qualified”.

(D) The item relating to section 30 in the table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting “battery” after “qualified”.

(E) Section 179A(c)(3) is amended by inserting “battery” before “electric”.

(F) The heading of paragraph (3) of section 179A(c) is amended by inserting “BATTERY” before “ELECTRIC”.

(c) ADDITIONAL SPECIAL RULES.—Section 30(d) (relating to special rules) is amended by adding at the end the following:

“(5) NO DOUBLE BENEFIT.—The amount of any deduction or credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

“(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any sale or lease contract the specific amount of any credit otherwise allowable to the entity under this section and reduces the sale or lease price of such vehicle by an equivalent amount of such credit.

“(7) CARRYFORWARD ALLOWED.—

“(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(3) for such taxable year, such excess shall be allowed as a credit carryforward for each of the 20 taxable years following such taxable year.

“(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under subparagraph (A).”

(d) EXTENSION.—Section 30(e) (relating to termination) is amended by striking “2004” and inserting “2007”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2001, in taxable years ending after such date.

SEC. 107. TAX CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

“SEC. 45G. ENERGY EFFICIENT APPLIANCE CREDIT.

“(a) GENERAL RULE.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the applicable amount determined under subsection (b) with respect to the eligible production of qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

“(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

“(1) APPLICABLE AMOUNT.—The applicable amount is—

“(A) \$50 in the case of an energy efficient clothes washer described in subsection (d)(2)(A) or an energy efficient refrigerator described in subsection (d)(3)(B)(i), and

“(B) \$100 in the case of any other energy efficient clothes washer or energy efficient refrigerator.

“(2) ELIGIBLE PRODUCTION.—

“(A) IN GENERAL.—The eligible production of each category of qualified energy efficient appliances is the excess of—

“(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

“(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 1998, 1999, and 2000.

“(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

“(i) energy efficient clothes washers described in subsection (d)(2)(A),

“(ii) energy efficient clothes washers described in subsection (d)(2)(B),

“(iii) energy efficient refrigerators described in subsection (d)(3)(B)(i),

and

“(iv) energy efficient refrigerators described in subsection (d)(3)(B)(ii).

“(C) SPECIAL RULE FOR 2001 PRODUCTION.—For purposes of determining eligible production for calendar year 2001—

“(i) only production after the date of the enactment of this section shall be taken into account under subparagraph (A)(i), and

“(ii) the amount taken into account under subparagraph (A)(ii) shall be an amount which bears the same ratio to the amount which would (but for this subparagraph) be taken into account under subparagraph (A)(ii) as—

“(I) the number of days in calendar year 2001 after the date of the enactment of this section, bears to

“(II) 365.

“(c) LIMITATION ON MAXIMUM CREDIT.—

“(1) IN GENERAL.—The maximum amount of credit allowed under subsection

(a) with respect to a taxpayer for all taxable years shall be—

“(A) \$30,000,000 with respect to the credit determined under subsection (b)(1)(A), and

“(B) \$30,000,000 with respect to the credit determined under subsection (b)(1)(B).

“(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

“(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

“(d) QUALIFIED ENERGY EFFICIENT APPLIANCE.—For purposes of this section:

“(1) IN GENERAL.—The term ‘qualified energy efficient appliance’ means—

“(A) an energy efficient clothes washer, or

“(B) an energy efficient refrigerator.

“(2) ENERGY EFFICIENT CLOTHES WASHER.—The term ‘energy efficient clothes washer’ means a residential clothes washer, including a residential style coin operated washer, which is manufactured with—

“(A) a 1.26 MEF or greater, or

“(B) a 1.42 MEF (1.5 MEF for washers produced after 2004) or greater.

“(3) ENERGY EFFICIENT REFRIGERATOR.—The term ‘energy efficient refrigerator’ means an automatic defrost refrigerator-freezer which—

“(A) has an internal volume of at least 16.5 cubic feet, and

“(B) consumes—

“(i) 10 percent less kw/hr/yr than the energy conservation standards promulgated by the Department of Energy for refrigerators produced during 2001, and

“(ii) 15 percent less kw/hr/yr than such energy conservation standards for refrigerators produced after 2001.

“(4) MEF.—The term ‘MEF’ means Modified Energy Factor (as determined by the Secretary of Energy).

“(e) SPECIAL RULES.—

“(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

“(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

“(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

“(g) TERMINATION.—This section shall not apply—

“(1) with respect to energy efficient refrigerators described in subsection (d)(3)(B)(i) produced after 2004, and

“(2) with respect to all other qualified energy efficient appliances produced after 2006.”.

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules) is amended by adding at the end the following new paragraph:

“(11) NO CARRYBACK OF ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy efficient appliance credit determined under section 45G may be carried to a taxable year ending before the date of the enactment of section 45G.”.

(c) CONFORMING AMENDMENT.—Section 38(b) (relating to general business credit) is amended by striking “plus” at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting “, plus”, and by adding at the end the following new paragraph:

“(16) the energy efficient appliance credit determined under section 45G(a).”.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45F the following new item:

“Sec. 45G. Energy efficient appliance credit.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 108. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

“SEC. 25E. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

“(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

“(b) LIMITATIONS.—

“(1) MAXIMUM CREDIT.—The credit allowed by this section with respect to a dwelling shall not exceed \$2,000.

“(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed to the taxpayer under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of \$2,000 reduced by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all prior taxable years.

“(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

“(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

“(B) the sum of the credits allowable under this subpart (other than this section and section 23) and section 27 for the taxable year.

“(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by subsection (b)(3) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

“(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term ‘qualified energy efficiency improvements’ means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 1998 International Energy Conservation Code, if—

“(1) such component is installed in or on a dwelling—

“(A) located in the United States, and

“(B) owned and used by the taxpayer as the taxpayer’s principal residence (within the meaning of section 121),

“(2) the original use of such component commences with the taxpayer, and

“(3) such component reasonably can be expected to remain in use for at least 5 years.

If the aggregate cost of such components with respect to any dwelling exceeds \$1,000, such components shall be treated as qualified energy efficiency improvements only if such components are also certified in accordance with subsection (e) as meeting such criteria.

“(e) CERTIFICATION.—The certification described in subsection (d) shall be—

“(1) determined on the basis of the technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency, based upon energy use or building envelope component performance, for the energy efficient building envelope component,

“(2) provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider who is accredited by or otherwise authorized to use approved energy performance measurement methods by the Home Energy Ratings Systems Council or the National Association of State Energy Officials, and

“(3) made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components installed and their respective energy efficiency levels.

“(f) DEFINITIONS AND SPECIAL RULES.—

“(1) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in

a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

“(2) CONDOMINIUMS.—

“(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having paid his proportionate share of the cost of qualified energy efficiency improvements made by such association.

“(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term ‘condominium management association’ means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

“(3) BUILDING ENVELOPE COMPONENT.—The term ‘building envelope component’ means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

“(4) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term ‘dwelling’ includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

“(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

“(h) APPLICATION OF SECTION.—This section shall apply to qualified energy efficiency improvements installed after December 31, 2001 and before January 1, 2007.”.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 1016 is amended by striking “and” at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting “, and”, and by adding at the end the following new paragraph:

“(32) to the extent provided in section 25E(g), in the case of amounts with respect to which a credit has been allowed under section 25E.”.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25D the following new item:

“Sec. 25E. Energy efficiency improvements to existing homes.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2001.

SEC. 109. BUSINESS CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 45G the following new section:

“SEC. 45H. NEW ENERGY EFFICIENT HOME CREDIT.

“(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualified new energy efficient home during construction of such home.

“(b) LIMITATIONS.—

“(1) MAXIMUM CREDIT.—

“(A) IN GENERAL.—The credit allowed by this section with respect to a dwelling shall not exceed \$2,000.

“(B) PRIOR CREDIT AMOUNTS ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of \$2,000 reduced by the sum of the credits allowed under subsection (a) with respect to the dwelling for all prior taxable years.

“(2) COORDINATION WITH REHABILITATION AND ENERGY CREDITS.—For purposes of this section—

“(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to

qualified rehabilitation expenditures (as defined in section 47(c)(2)) or to the energy percentage of energy property (as determined under section 48(a)), and

“(B) expenditures taken into account under either section 47 or 48(a) shall not be taken into account under this section.

“(c) DEFINITIONS.—For purposes of this section—

“(1) ELIGIBLE CONTRACTOR.—The term ‘eligible contractor’ means the person who constructed the new energy efficient home, or in the case of a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280), the manufactured home producer of such home.

“(2) ENERGY EFFICIENT PROPERTY.—The term ‘energy efficient property’ means any energy efficient building envelope component, and any energy efficient heating or cooling appliance.

“(3) QUALIFIED NEW ENERGY EFFICIENT HOME.—The term ‘qualified new energy efficient home’ means a dwelling—

“(A) located in the United States,

“(B) the construction of which is substantially completed after December 31, 2001,

“(C) the original use of which is as a principal residence (within the meaning of section 121) which commences with the person who acquires such dwelling from the eligible contractor, and

“(D) which is certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 1998 International Energy Conservation Code.

“(4) CONSTRUCTION.—The term ‘construction’ includes reconstruction and rehabilitation.

“(5) ACQUIRE.—The term ‘acquire’ includes purchase and, in the case of reconstruction and rehabilitation, such term includes a binding written contract for such reconstruction or rehabilitation.

“(6) BUILDING ENVELOPE COMPONENT.—The term ‘building envelope component’ means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

“(7) MANUFACTURED HOME INCLUDED.—The term ‘dwelling’ includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

“(d) CERTIFICATION.—

“(1) METHOD.—A certification described in subsection (c)(3)(D) shall be determined on the basis of one of the following methods:

“(A) The technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency for the energy efficient building envelope component or energy efficient heating or cooling appliance, based upon energy use or building envelope component performance.

“(B) An energy performance measurement method that utilizes computer software approved by organizations designated by the Secretary.

“(2) PROVIDER.—Such certification shall be provided by—

“(A) in the case of a method described in paragraph (1)(A), a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating systems provider who is accredited by, or otherwise authorized to use, approved energy performance measurement methods by the Home Energy Ratings Systems Council or the National Association of State Energy Officials, or

“(B) in the case of a method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

“(3) FORM.—Such certification shall be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling appliances installed and their respective energy efficiency levels, and in the case of a method described in subparagraph (B) of paragraph (1), accompanied by written analysis documenting

the proper application of a permissible energy performance measurement method to the specific circumstances of such dwelling.

“(4) REGULATIONS.—

“(A) IN GENERAL.—In prescribing regulations under this subsection for energy performance measurement methods, the Secretary shall prescribe procedures for calculating annual energy costs for heating and cooling and cost savings and for the reporting of the results. Such regulations shall—

“(i) be based on the National Home Energy Rating Technical Guidelines of the National Association of State Energy Officials, the Home Energy Rating Guidelines of the Home Energy Rating Systems Council, or the modified 1998 California Residential ACM manual,

“(ii) provide that any calculation procedures be developed such that the same energy efficiency measures allow a home to qualify for the credit under this section regardless of whether the house uses a gas or oil furnace or boiler or an electric heat pump, and

“(iii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and explanations for the homebuyer of the energy efficient features that were used to comply with the requirements of this section.

“(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the National Association of State Energy Officials.

“(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

“(f) APPLICATION OF SECTION.—Subsection (a) shall apply to dwellings purchased during the period beginning on January 1, 2002, and ending on December 31, 2006.”

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to current year business credit) is amended by striking “plus” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “, plus”, and by adding at the end thereof the following new paragraph:

“(17) the new energy efficient home credit determined under section 45H.”

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end thereof the following new subsection:

“(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a new energy efficient home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45H.”

(d) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

“(12) **NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—**No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45H may be carried back to any taxable year ending before January 1, 2002.”

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Subsection (c) of section 196 is amended by striking “and” at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting “, and”, and by adding after paragraph (10) the following new paragraph:

“(11) the new energy efficient home credit determined under section 45H.”

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45G the following new item:

“Sec. 45H. New energy efficient home credit.”

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2001.

SEC. 110. ALLOWANCE OF DEDUCTION FOR ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

“SEC. 179B. DEDUCTION FOR ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.

“(a) ALLOWANCE OF DEDUCTION.—

“(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to energy efficient commercial building property expenditures made by a taxpayer for the taxable year.

“(2) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient commercial building property expenditures taken into account under paragraph (1) shall not exceed an amount equal to the product of—

“(A) \$2.25, and

“(B) the square footage of the building with respect to which the expenditures are made.

“(3) YEAR DEDUCTION ALLOWED.—The deduction under paragraph (1) shall be allowed for the taxable year in which the building is placed in service.

“(b) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY EXPENDITURES.—For purposes of this section, the term ‘energy efficient commercial building property expenditures’ means an amount paid or incurred for energy efficient commercial building property installed on or in connection with new construction or reconstruction of property—

“(1) for which depreciation is allowable under section 167,

“(2) which is located in the United States, and

“(3) the construction or erection of which is completed by the taxpayer.

Such property includes all residential rental property, including low-rise multifamily structures and single family housing property which is not within the scope of Standard 90.1–1999 (described in subsection (c)). Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

“(c) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.—For purposes of subsection (b)—

“(1) IN GENERAL.—The term ‘energy efficient commercial building property’ means any property which reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a reference building which meets the requirements of Standard 90.1–1999 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America using methods of calculation under paragraph (2) and certified by qualified professionals as provided under subsection (f).

“(2) METHODS OF CALCULATION.—The Secretary, in consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, taking into consideration the provisions of the 1998 California Nonresidential ACM Manual. These procedures shall meet the following requirements:

“(A) In calculating tradeoffs and energy performance, the regulations shall prescribe the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage.

“(B) The calculational methodology shall require that compliance be demonstrated for a whole building. If some systems of the building, such as lighting, are designed later than other systems of the building, the method shall provide that either—

“(i) the expenses taken into account under subsection (a) shall not occur until the date designs for all energy-using systems of the building are completed,

“(ii) the energy performance of all systems and components not yet designed shall be assumed to comply minimally with the requirements of such Standard 90.1–1999, or

“(iii) the expenses taken into account under subsection (a) shall be a fraction of such expenses based on the performance of less than all energy-using systems in accordance with subparagraph (C).

“(C) The expenditures in connection with the design of subsystems in the building, such as the envelope, the heating, ventilation, air conditioning and water heating system, and the lighting system shall be allocated to the appropriate building subsystem based on system-specific energy cost savings targets in regulations promulgated by the Secretary of Energy which are equivalent, using the calculation methodology, to the whole building requirement of 50 percent savings.

“(D) The calculational methods under this subparagraph need not comply fully with section 11 of such Standard 90.1–1999.

“(E) The calculational methods shall be fuel neutral, such that the same energy efficiency features shall qualify a building for the deduction under

this subsection regardless of whether the heating source is a gas or oil furnace or an electric heat pump.

“(F) The calculational methods shall provide appropriate calculated energy savings for design methods and technologies not otherwise credited in either such Standard 90.1–1999 or in the 1998 California Nonresidential ACM Manual, including the following:

- “(i) Natural ventilation.
- “(ii) Evaporative cooling.
- “(iii) Automatic lighting controls such as occupancy sensors, photocells, and timeclocks.
- “(iv) Daylighting.
- “(v) Designs utilizing semi-conditioned spaces that maintain adequate comfort conditions without air conditioning or without heating.
- “(vi) Improved fan system efficiency, including reductions in static pressure.
- “(vii) Advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors.
- “(viii) The calculational methods may take into account the extent of commissioning in the building, and allow the taxpayer to take into account measured performance that exceeds typical performance.

“(3) COMPUTER SOFTWARE.—

“(A) IN GENERAL.—Any calculation under this subsection shall be prepared by qualified computer software.

“(B) QUALIFIED COMPUTER SOFTWARE.—For purposes of this paragraph, the term ‘qualified computer software’ means software—

- “(i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,
- “(ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and
- “(iii) which provides a notice form which summarizes the energy efficiency features of the building and its projected annual energy costs.

“(d) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property installed on or in public property, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the public entity which is the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

“(e) NOTICE TO OWNER.—The qualified individual shall provide an explanation to the owner of the building regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under subsection (c)(3)(B)(iii).

“(f) CERTIFICATION.—The Secretary, in consultation with the Secretary of Energy, shall establish requirements for certification and compliance procedures similar to the procedures under section 45H(d).

“(g) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by subsection (a).

“(h) TERMINATION.—This section shall not apply to property placed in service after December 31, 2006.”

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking “and” at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting “, and”, and by inserting the following new paragraph:

“(33) to the extent provided in section 179B(g).”.

(2) Section 1245(a) is amended by inserting “179B,” after “179A,” both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence “or by section 179B”.

(4) Section 263(a)(1) is amended by striking “or” at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting “, or”, and by inserting after subparagraph (H) the following new subparagraph:

“(I) expenditures for which a deduction is allowed under section 179B.”.

(5) Section 312(k)(3)(B) is amended by striking “or 179A” each place it appears in the heading and text and inserting “, 179A, or 179B”.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding after section 179A the following new item:

“Sec. 179B. Deduction for energy efficient commercial building property.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 111. ALLOWANCE OF DEDUCTION FOR QUALIFIED ENERGY MANAGEMENT DEVICES AND RETROFITTED QUALIFIED METERS.

(a) **IN GENERAL.**—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179B the following new section:

“SEC. 179C. DEDUCTION FOR QUALIFIED ENERGY MANAGEMENT DEVICES AND RETROFITTED METERS.

“(a) **ALLOWANCE OF DEDUCTION.**—In the case of a taxpayer who is a supplier of electric energy or natural gas or a provider of electric energy or natural gas services, there shall be allowed as a deduction an amount equal to the cost of each qualified energy management device placed in service during the taxable year.

“(b) **MAXIMUM DEDUCTION.**—The deduction allowed by this section with respect to each qualified energy management device shall not exceed \$30.

“(c) **QUALIFIED ENERGY MANAGEMENT DEVICE.**—The term ‘qualified energy management device’ means any tangible property to which section 168 applies if such property is a meter or metering device—

“(1) which is acquired and used by the taxpayer to enable consumers to manage their purchase or use of electricity or natural gas in response to energy price and usage signals, and

“(2) which permits reading of energy price and usage signals on at least a daily basis.

“(d) **PROPERTY USED OUTSIDE THE UNITED STATES NOT QUALIFIED.**—No deduction shall be allowed under subsection (a) with respect to property which is used predominantly outside the United States or with respect to the portion of the cost of any property taken into account under section 179.

“(e) **BASIS REDUCTION.**—

“(1) **IN GENERAL.**—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by subsection (a).

“(2) **ORDINARY INCOME RECAPTURE.**—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property that is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 263(a)(1) is amended by striking “or” at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting “, or”, and by inserting after subparagraph (I) the following new subparagraph:

“(J) expenditures for which a deduction is allowed under section 179C.”.

(2) Section 312(k)(3)(B) is amended by striking “or 179B” each place it appears in the heading and text and inserting “, 179B, or 179C”.

(3) Section 1016(a) is amended by striking “and” at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting “, and”, and by inserting after paragraph (33) the following new paragraph:

“(34) to the extent provided in section 179C(e)(1).”.

(4) Section 1245(a) is amended by inserting “179C,” after “179B,” both places it appears in paragraphs (2)(C) and (3)(C).

(5) The table of contents for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 179B the following new item:

“Sec. 179C. Deduction for qualified energy management devices and retrofitted meters.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to qualified energy management devices placed in service after the date of the enactment of this Act.

SEC. 112. 3-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) **IN GENERAL.**—Subparagraph (A) of section 168(e)(3) (relating to classification of property) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause:

“(iv) any qualified energy management device.”.

(b) **DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.**—Section 168(i) (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

“(15) **QUALIFIED ENERGY MANAGEMENT DEVICE.**—The term ‘qualified energy management device’ means any qualified energy management device as defined

in section 179C(c) which is placed in service by a taxpayer who is a supplier of electric energy or natural gas or a provider of electric energy or natural gas services.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 113. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking “or” at the end of clause (ii), by adding “or” at the end of clause (iii), and by inserting after clause (iii) the following new clause:

“(iv) combined heat and power system property.”.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Subsection (a) of section 48 is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

“(5) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this subsection—

“(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term ‘combined heat and power system property’ means property comprising a system—

“(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

“(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

“(iii) which produces—

“(I) at least 20 percent of its total useful energy in the form of thermal energy, and

“(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

“(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

“(v) which is placed in service after December 31, 2001, and before January 1, 2007.

“(B) SPECIAL RULES.—

“(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

“(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and

“(II) the denominator of which is the lower heating value of the primary fuel source for the system.

“(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(iii) shall be determined on a Btu basis.

“(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term ‘combined heat and power system property’ does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

“(iv) PUBLIC UTILITY PROPERTY.—

“(I) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(1)), the taxpayer may only claim the credit under the subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

“(II) CERTAIN EXCEPTION NOT TO APPLY.—The matter in paragraph (3) which follows subparagraph (D) shall not apply to combined heat and power system property.

“(C) EXTENSION OF DEPRECIATION RECOVERY PERIOD.—If a taxpayer is allowed credit under this section for combined heat and power system property and such property would (but for this subparagraph) have a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.”.

(c) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

“(13) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending before January 1, 2002.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2001.

SEC. 114. NEW NONREFUNDABLE PERSONAL CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAXES.

(a) IN GENERAL.—Paragraph (1) of section 26(a) is amended by striking “and 25B” and inserting “25B, 25C, 25D, and 25E”.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) is amended by striking “and 25B” and inserting “, 25B, 25C, 25D, and 25E”.

(2) Section 25(e)(1)(C) is amended by inserting “25C, 25D, and 25E” after “25B,”.

(3) Section 25B(g)(2) is amended by striking “section 23” and inserting “sections 23, 25C, 25D, and 25E”.

(4) Section 904(h) is amended by striking “and 25B” and inserting “25B, 25C, 25D, and 25E”.

(5) Section 1400C(d) is amended by striking “and 25B” and inserting “25B, 25C, 25D, and 25E”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 115. PHASEOUT OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Clause (ii) of section 4041(a)(1)(C) is amended by striking subclauses (I), (II), and (III) and inserting the following new subclauses:

“(I) 3.3 cents per gallon after September 30, 2001, and before January 1, 2005,

“(II) 2.3 cents per gallon after December 31, 2004, and before January 1, 2007,

“(III) 1.3 cents per gallon after December 31, 2006, and before January 1, 2009,

“(IV) 0.3 cent per gallon after December 31, 2008, and before January 1, 2010, and

“(V) 0 after December 31, 2009.”.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) DIESEL FUEL USED IN TRAINS.—In the case of any sale for use (or use) after September 30, 2010, there is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

“(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

“(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.”

(B) Subsection (f) of section 4082 is amended by striking “section 4041(a)(1)” and inserting “subsections (a)(1) and (d)(3) of section 4041”.

(C) Subparagraph (B) of section 6421(f)(3) is amended to read as follows:

“(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).”

(D) Subparagraph (B) of section 6427(l)(3) is amended to read as follows:

“(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).”

(b) FUEL USED ON INLAND WATERWAYS.—Subparagraph (C) of section 4042(b)(2) is amended to read as follows:

“(C) The deficit reduction rate is—

“(i) 3.3 cents per gallon after September 30, 2001, and before January 1, 2005,

“(ii) 2.3 cents per gallon after December 31, 2004, and before January 1, 2007,

“(iii) 1.3 cents per gallon after December 31, 2006, and before January 1, 2009,

- “(iv) 0.3 cent per gallon after December 31, 2008, and before January 1, 2010, and
- “(v) 0 after December 31, 2009.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2001.

SEC. 116. REDUCED MOTOR FUEL EXCISE TAX ON CERTAIN MIXTURES OF DIESEL FUEL.

(a) **IN GENERAL.**—Clause (iii) of section 4081(a)(2)(A) is amended by inserting before the period “(19.7 cents per gallon in the case of a diesel-water fuel emulsion at least 14 percent of which is water)”.

(b) **REFUNDS FOR TAX-PAID PURCHASES.**—

(1) **IN GENERAL.**—Section 6427 is amended by redesignating subsections (m) through (p) as subsections (n) through (q), respectively, and by inserting after subsection (l) the following new subsection:

“(m) **DIESEL FUEL USED TO PRODUCE EMULSION.**—

“(1) **IN GENERAL.**—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(A) which is sold or used in such person’s trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

“(2) **DEFINITIONS.**—For purposes of paragraph (1)—

“(A) **REGULAR TAX RATE.**—The term ‘regular tax rate’ means the aggregate rate of tax imposed by section 4081 determined without regard to the parenthetical in section 4081(a)(2)(A).

“(B) **INCENTIVE TAX RATE.**—The term ‘incentive tax rate’ means the aggregate rate of tax imposed by section 4081 determined with regard to the parenthetical in section 4081(a)(2)(A).”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2001.

SEC. 117. CREDIT FOR INVESTMENT IN QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) **ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY CREDIT.**—Section 46 (relating to amount of credit) is amended by striking “and” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “, and”, and by adding at the end the following:

“(4) the qualifying advanced clean coal technology facility credit.”.

(b) **AMOUNT OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY CREDIT.**—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following:

“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY CREDIT.

“(a) **IN GENERAL.**—For purposes of section 46, the qualifying advanced clean coal technology facility credit for any taxable year is an amount equal to 10 percent of the qualified investment in a qualifying advanced clean coal technology facility for such taxable year.

“(b) **QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY.**—

“(1) **IN GENERAL.**—For purposes of subsection (a), the term ‘qualifying advanced clean coal technology facility’ means a facility of the taxpayer which—

“(A)(i)(I) original use of which commences with the taxpayer, or

“(II) is a retrofitted or repowered conventional technology facility, the retrofitting or repowering of which is completed by the taxpayer (but only with respect to that portion of the basis which is properly attributable to such retrofitting or repowering), or

“(ii) is acquired through purchase (as defined by section 179(d)(2)),

“(B) is depreciable under section 167,

“(C) has a useful life of not less than 4 years,

“(D) is located in the United States, and

“(E) uses qualifying advanced clean coal technology.

“(2) **SPECIAL RULE FOR SALE-LEASEBACKS.**—For purposes of subparagraph (A) of paragraph (1), in the case of a facility which—

“(A) is originally placed in service by a person, and

“(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such facility was originally placed in service, for a period of not less than 12 years,

such facility shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence.

Such an election, once made, may be revoked only with the consent of the Secretary.

“(c) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualifying advanced clean coal technology’ means, with respect to clean coal technology—

“(A) which has—

“(i) multiple applications, with a combined capacity of not more than 5,000 megawatts (4,000 megawatts before 2009), of advanced pulverized coal or atmospheric fluidized bed combustion technology—

“(I) installed as a new, retrofit, or repowering application,

“(II) operated between 2000 and 2012, and

“(III) having a design net heat rate of not more than 9,500 Btu per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound, or a design net heat rate of not more than 9,900 Btu per kilowatt hour when the design coal has a heat content of 9,000 Btu per pound or less,

“(ii) multiple applications, with a combined capacity of not more than 1,000 megawatts (500 megawatts before 2009 and 750 megawatts before 2013), of pressurized fluidized bed combustion technology—

“(I) installed as a new, retrofit, or repowering application,

“(II) operated between 2000 and 2016, and

“(III) having a design net heat rate of not more than 8,400 Btu per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound, or a design net heat rate of not more than 9,900 Btu’s per kilowatt hour when the design coal has a heat content of 9,000 Btu per pound or less, and

“(iii) multiple applications, with a combined capacity of not more than 2,000 megawatts (1,000 megawatts before 2009 and 1,500 megawatts before 2013), of integrated gasification combined cycle technology, with or without fuel or chemical co-production—

“(I) installed as a new, retrofit, or repowering application,

“(II) operated between 2000 and 2016,

“(III) having a design net heat rate of not more than 8,550 Btu per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound, or a design net heat rate of not more than 9,900 Btu per kilowatt hour when the design coal has a heat content of 9,000 Btu per pound or less, and

“(IV) having a net thermal efficiency on any fuel or chemical co-production of not less than 39 percent (higher heating value), or

“(iv) multiple applications, with a combined capacity of not more than 2,000 megawatts (1,000 megawatts before 2009 and 1,500 megawatts before 2013) of technology for the production of electricity—

“(I) installed as a new, retrofit, or repowering application,

“(II) operated between 2000 and 2016, and

“(III) having a carbon emission rate which is not more than 85 percent of conventional technology, and

“(B) which reduces the discharge into the atmosphere of 1 or more of the following pollutants to not more than—

“(i) 5 percent of the potential combustion concentration sulfur dioxide emissions for a coal with a potential combustion concentration sulfur emission of 1.2 lb/million btu of heat input or greater,

“(ii) 15 percent of the potential combustion concentration sulfur dioxide emissions for a coal with a potential combustion concentration sulfur emission of less than 1.2 lb/million btu of heat input,

“(iii) nitrogen oxide emissions of 0.1 lb per million btu of heat input from other than cyclone-fired boilers,

“(iv) 15 percent of the uncontrolled nitrogen oxide emissions from cyclone-fired boilers,

“(v) particulate emissions of 0.02 lb per million btu of heat input, and

“(vi) the emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect at the time of retrofitting, repowering, or replacement of the qualifying clean coal technology unit for the category of source if such level is lower than the levels specified in clause (i), (ii), (iii), (iv), or (v).

“(2) EXCEPTIONS.—Such term shall not include any projects receiving or scheduled to receive funding under the Clean Coal Technology Program, or the Power Plant Improvement administered by the Secretary of the Department of Energy.

“(d) CLEAN COAL TECHNOLOGY.—For purposes of this section, the term ‘clean coal technology’ means advanced technology which uses coal to produce 75 percent or more of its thermal output as electricity including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle with or without fuel or chemical co-production, and any other technology for the production of electricity which exceeds the performance of conventional technology.

“(e) CONVENTIONAL TECHNOLOGY.—The term ‘conventional technology’ means—

“(1) coal-fired combustion technology with a design net heat rate of not less than 9,500 Btu per kilowatt hour (HHV) and a carbon equivalents emission rate of not more than 0.54 pounds of carbon per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound,

“(2) coal-fired combustion technology with a design net heat rate of not less than 10,500 Btu per kilowatt hour (HHV) and a carbon equivalents emission rate of not more than 0.60 pounds of carbon per kilowatt hour when the design coal has a heat content of 9,000 Btu per pound or less, or

“(3) natural gas-fired combustion technology with a design net heat rate of not less than 7,500 Btu per kilowatt hour (HHV) and a carbon equivalents emission rate of not more than 0.24 pounds of carbon per kilowatt hour.

“(f) DESIGN NET HEAT RATE.—The design net heat rate shall be based on the design annual heat input to and the design annual net electrical output from the qualifying advanced clean coal technology (determined without regard to such technology’s co-generation of steam).

“(g) SELECTION CRITERIA.—Selection criteria for qualifying advanced clean coal technology facilities—

“(1) shall be established by the Secretary of Energy as part of a competitive solicitation,

“(2) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the government, and

“(3) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

“(h) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term ‘qualified investment’ means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology facility placed in service by the taxpayer during such taxable year.

“(i) QUALIFIED PROGRESS EXPENDITURES.—

“(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (c) without regard to this section) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

“(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term ‘progress expenditure property’ means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology facility which is being constructed by or for the taxpayer when it is placed in service.

“(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

“(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term ‘qualified progress expenditures’ means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

“(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term ‘qualified progress expenditures’ means the amount paid during the taxable year to another person for the construction of such property.

“(4) OTHER DEFINITIONS.—For purposes of this subsection—

“(A) SELF-CONSTRUCTED PROPERTY.—The term ‘self-constructed property’ means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

“(B) NONSELF-CONSTRUCTED PROPERTY.—The term ‘nonself-constructed property’ means property which is not self-constructed property.

“(C) CONSTRUCTION, ETC.—The term ‘construction’ includes reconstruction and erection, and the term ‘constructed’ includes reconstructed and erected.

“(D) ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY TO BE TAKEN INTO ACCOUNT.—Construction shall be taken

into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

“(5) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

“(j) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.

“(k) TERMINATION.—This section shall not apply with respect to any qualified investment made after December 31, 2011.

“(l) NATIONAL LIMITATION.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, the term ‘qualifying advanced clean coal technology facility’ shall include such a facility only to the extent that such facility is allocated a portion of the national megawatt limitation under this subsection.

“(2) NATIONAL MEGAWATT LIMITATION.—The national megawatt limitation under this subsection is 7,500 megawatts.

“(3) ALLOCATION OF LIMITATION.—The national megawatt limitation shall be allocated by the Secretary under rules prescribed by the Secretary. Not later than 6 months after the date of enactment of this subsection, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

“(A) to limit which facility qualifies as ‘qualified advanced clean coal technology’ in subsection (c) to particular facilities, a portion of particular facilities, or a portion of the production from particular facilities, so that when all such facilities (or portions thereof) are placed in service over the ten year period in section (k), the combination of facilities approved for tax credits (and/or portions of facilities approved for tax credits) will not exceed a combined capacity of 7,500 megawatts;

“(B) to provide a certification process in consultation with the Secretary of Energy under subsection (g) that will approve and allocate the 7,500 megawatts of available tax credits authority—

“(i) to encourage that facilities with the highest thermal efficiencies and environmental performance be placed in service as soon as possible;

“(ii) to allocate credits to taxpayers that have a definite and credible plan for placing into commercial operation a qualifying advanced clean coal technology facility, including—

“(I) a site,

“(II) contractual commitments for procurement and construction,

“(III) filings for all necessary preconstruction approvals,

“(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

“(V) such other factors that the Secretary shall determine are appropriate;

“(iii) to allocate credits to a portion of a facility (or a portion of the production from a facility) if the Secretary determines that such an allocation should maximize the amount of efficient production encouraged with the available tax credits;

“(C) to set progress requirements and conditional approvals so that credits for approved projects that become unlikely to meet the necessary conditions that can be reallocated by the Secretary to other projects;

“(D) to reallocate credits that are not allocated to 1 technology described in clauses (i) through (iv) of subsection (c)(1)(A) because an insufficient number of qualifying facilities requested credits for one technology, to another technology described in another subparagraph of subsection (c) in order to maximize the amount of energy efficient production encouraged with the available tax credits; and

“(E) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and recordkeeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.”.

(c) RECAPTURE.—Section 50(a) (relating to other special rules) is amended by adding at the end the following:

“(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY.—For purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following shall apply:

“(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology facility (as defined by section 48A(b)(1)) multiplied by a fraction whose numerator is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology facility disposed of, and whose denominator is the total number of years over which such facility would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology facility property shall be treated as a year of remaining depreciation.

“(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology facility under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted in lieu of the amount described in such paragraph (2).

“(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology facility.”

(d) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules) is amended by adding at the end the following:

“(14) NO CARRYBACK OF SECTION 48A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology facility credit determined under section 48A may be carried back to a taxable year ending before January 1, 2002.”

(e) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following:

“(iv) the portion of the basis of any qualifying advanced clean coal technology facility attributable to any qualified investment (as defined by section 48A(c)).”

(2) Section 50(a)(4) is amended by striking “and (2)” and inserting “, (2), and (6)”.

(3) Section 50(c) is amended by adding at the end the following new paragraph:

“(6) SPECIAL RULE FOR QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITIES.—Paragraphs (1) and (2) shall not apply to any property with respect to the credit determined under section 48A.”

(4) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following:

“Sec. 48A. Qualifying advanced clean coal technology facility credit.”

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 2001, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

SEC. 118. CREDIT FOR PRODUCTION FROM QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) CREDIT FOR PRODUCTION FROM QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding after section 45J the following:

“SEC. 45K. CREDIT FOR PRODUCTION FROM QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

“(a) GENERAL RULE.—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

“(1) the applicable amount of advanced clean coal technology production credit, multiplied by

“(2) the sum of—

“(A) the kilowatt hours of electricity, plus

“(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology facility during the 10-year period beginning on the date the facility was originally placed in service.

“(b) APPLICABLE AMOUNT.—For purposes of this section, the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology facility shall be determined as follows:

“(1) Where the design coal has a heat content of more than 9,000 Btu per pound:

“(A) In the case of a facility originally placed in service before 2009, if—

“The facility design net heat rate, Btu/kWh (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,400	\$.0060	\$.0038
More than 8,400 but not more than 8,550	\$.0025	\$.0010
More than 8,550 but not more than 8,750	\$.0010	\$.0010.

“(B) In the case of a facility originally placed in service after 2008 and before 2013, if—

“The facility design net heat rate, Btu/kWh (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770	\$.0105	\$.0090
More than 7,770 but not more than 8,125	\$.0085	\$.0068
More than 8,125 but not more than 8,350	\$.0075	\$.0055.

“(C) In the case of a facility originally placed in service after 2012 and before 2017, if—

“The facility design net heat rate, Btu/kWh (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380	\$.0140	\$.01
More than 7,380 but not more than 7,720	\$.0120	\$.0090.

“(2) Where the design coal has a heat content of not more than 9,000 Btu per pound:

“(A) In the case of a facility originally placed in service before 2009, if—

“The facility design net heat rate, Btu/kWh (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500	\$.0060	\$.0038
More than 8,500 but not more than 8,650	\$.0025	\$.0010
More than 8,650 but not more than 8,750	\$.0010	\$.0010.

“(B) In the case of a facility originally placed in service after 2008 and before 2013, if—

“The facility design net heat rate, Btu/kWh (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,000	\$.0105	\$.009
More than 8,000 but not more than 8,250	\$.0085	\$.0068
More than 8,250 but not more than 8,400	\$.0075	\$.0055.

“(C) In the case of a facility originally placed in service after 2012 and before 2017, if—

“The facility design net heat rate, Btu/kWh (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,800	\$.0140	\$.0115
More than 7,800 but not more than 7,950	\$.0120	\$.0090.

“(3) Where the clean coal technology facility is producing fuel or chemicals:
“(A) In the case of a facility originally placed in service before 2009, if—

“The facility design net thermal efficiency (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.6 percent	\$.0060	\$.0038
Less than 40.6 but not less than 40 percent	\$.0025	\$.0010
Less than 40 but not less than 39 percent	\$.0010	\$.0010.

“(B) In the case of a facility originally placed in service after 2008 and before 2013, if—

“The facility design net thermal efficiency (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.9 percent	\$.0105	\$.009
Less than 43.9 but not less than 42 percent	\$.0085	\$.0068
Less than 42 but not less than 40.9 percent	\$.0075	\$.0055.

“(C) In the case of a facility originally placed in service after 2012 and before 2017, if—

“The facility design net thermal efficiency (HHV) is equal to:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 44.2 percent	\$.0140	\$.0115
Less than 44.2 but not less than 43.6 percent ...	\$.0120	\$.0090.

“(c) INFLATION ADJUSTMENT FACTOR.—For calendar years after 2001, each amount in paragraphs (1), (2), and (3) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) IN GENERAL.—Any term used in this section which is also used in section 48A shall have the meaning given such term in section 48A.

“(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 45 shall apply.

“(3) INFLATION ADJUSTMENT FACTOR.—The term ‘inflation adjustment factor’ means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2001.

“(4) GDP IMPLICIT PRICE DEFLATOR.—The term ‘GDP implicit price deflator’ means the most recent revision of the implicit price deflator for the gross domestic product as computed by the Department of Commerce before March 15 of the calendar year.”.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) is amended by striking “plus” at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting “, plus”, and by adding at the end the following:

“(20) the qualifying advanced clean coal technology production credit determined under section 45K(a).”.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules) is amended by adding after paragraph (14) the following:

“(15) NO CARRYBACK OF SECTION 45K CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology production credit determined under section 45K may be carried back to a taxable year ending before the date of enactment of section 45K.”.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following:

“Sec. 45K. Credit for production from qualifying advanced clean coal technology.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production after the date of enactment of this Act.

TITLE II—RELIABILITY

SEC. 201. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by striking “and” at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

“(ii) any natural gas gathering line, and”.

(b) NATURAL GAS GATHERING LINE.—Subsection (i) of section 168 is amended by adding after paragraph (15) the following new paragraph:

“(16) NATURAL GAS GATHERING LINE.—The term ‘natural gas gathering line’ means—

“(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, or

“(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

“(i) a gas processing plant,

“(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

“(iii) an interconnection with an intrastate transmission pipeline, or

“(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.”.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (C)(i) the following:

“(C)(ii) 10”.

(d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: “or in clause (ii) of section 168(e)(3)(C)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 202. NATURAL GAS DISTRIBUTION LINES TREATED AS 10-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (D) of section 168(e)(3) (relating to classification of certain property) is amended by striking “and” at the end of clause (i), by striking the period at the end of clause (ii) and by inserting “, and”, and by adding at the end the following new clause:

“(iii) any natural gas distribution line.”

(b) **ALTERNATIVE SYSTEM.**—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (D)(ii) the following:

“(D)(iii) 20”.

(c) **ALTERNATIVE MINIMUM TAX EXCEPTION.**—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: “or in clause (iii) of section 168(e)(3)(D)”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 203. PETROLEUM REFINING PROPERTY TREATED AS 7-YEAR PROPERTY.

(a) **IN GENERAL.**—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property), as amended by section 201, is amended by striking “and” at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

“(iii) any property used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components, and”.

(b) **ALTERNATIVE SYSTEM.**—The table contained in section 168(g)(3)(B), as amended by section 201, is amended by inserting after the item relating to subparagraph (C)(ii) the following:

“(C)(iii) 10”.

(c) **ALTERNATIVE MINIMUM TAX EXCEPTION.**—Subparagraph (B) of section 56(a)(1), as amended by section 201, is amended by inserting “or (iii)” after “clause (ii)”.

(d) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 204. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) **IN GENERAL.**—Section 179(b) (relating to election to expense certain depreciable business assets) is amended by adding at the end the following new paragraph:

“(5) **LIMITATION FOR SMALL BUSINESS REFINERS.**—

“(A) **IN GENERAL.**—In the case of a small business refiner electing to expense qualified costs, in lieu of the dollar limitations in paragraph (1), the limitation on the aggregate costs which may be taken into account under subsection (a) for any taxable year shall not exceed 75 percent of the qualified costs.

“(B) **QUALIFIED COSTS.**—For purposes of this paragraph, the term ‘qualified costs’ means costs paid or incurred by a small business refiner for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

“(C) **SMALL BUSINESS REFINER.**—For purposes of this paragraph, the term ‘small business refiner’ means, with respect to any taxable year, a refiner which, within the refining operations of the business, employs not more than 1,500 employees on business days during such taxable year performing services in the refining operations of such businesses and has an average total capacity of 155,000 barrels per day or less.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to expenses paid or incurred after the date of the enactment of this Act.

SEC. 205. ENVIRONMENTAL TAX CREDIT.

(a) **IN GENERAL.**—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

“SEC. 45L. ENVIRONMENTAL TAX CREDIT.

“(a) **IN GENERAL.**—For purposes of section 38, the amount of the environmental tax credit determined under this section with respect to any small business refiner for any taxable year is an amount equal to 5 cents for every gallon of 15 parts per million or less sulfur diesel produced at a facility by such small business refiner.

“(b) **MAXIMUM CREDIT.**—For any small business refiner, the aggregate amount allowable as a credit under subsection (a) for any taxable year with respect to any facility shall not exceed 25 percent of the qualified capital costs incurred by such small business refiner with respect to such facility not taken into account in determining the credit under subsection (a) for any preceding taxable year.

“(c) **DEFINITIONS.**—For purposes of this section—

“(1) **SMALL BUSINESS REFINER.**—The term ‘small business refiner’ means, with respect to any taxable year, a refiner which, within the refining operations of the business, employs not more than 1,500 employees on business days during

such taxable year performing services in the refining operations of such businesses and has an average total capacity of 155,000 barrels per day or less.

“(2) QUALIFIED CAPITAL COSTS.—The term ‘qualified capital costs’ means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of 15 parts per million or less sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

“(3) APPLICABLE EPA REGULATIONS.—The term ‘applicable EPA regulations’ means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

“(4) APPLICABLE PERIOD.—The term ‘applicable period’ means, with respect to any facility, the period beginning on the day after the date of the enactment of this section and ending with the date which is one year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

“(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section with respect to any property by reason of qualified capital costs, the basis of such property shall be reduced by the amount of the credit so determined.

“(e) CERTIFICATION.—

“(1) REQUIRED.—Not later than the date which is 30 months after the first day of the first taxable year in which the environmental tax credit is allowed with respect to a facility, the small business refiner must obtain certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer’s qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

“(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

“(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application.

“(4) RECAPTURE.—Notwithstanding subsection (f), failure to obtain certification under paragraph (1) constitutes a recapture event under subsection (f) with an applicable percentage of 100 percent.

“(f) RECAPTURE OF ENVIRONMENTAL TAX CREDIT.—

“(1) IN GENERAL.—Except as provided in subsection (e), if, as of the close of any taxable year, there is a recapture event with respect to any facility of the small business refiner, then the tax of such refiner under this chapter for such taxable year shall be increased by an amount equal to the product of—

“(A) the applicable recapture percentage, and

“(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified capital costs of the taxpayer described in subsection (c)(2) with respect to such facility had been zero.

“(2) APPLICABLE RECAPTURE PERCENTAGE.—

“(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

“If the recapture event occurs in:	The applicable recapture percentage is:
Year 1	100
Year 2	80
Year 3	60
Year 4	40
Year 5	20
Years 6 and thereafter	0.

“(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified capital costs with respect to a facility described in subsection (c)(2) are paid or incurred by the taxpayer.

“(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term ‘recapture event’ means—

“(A) FAILURE TO COMPLY.—The failure by the small business refiner to meet the applicable EPA regulations within the applicable period with respect to the facility.

“(B) CESSATION OF OPERATION.—The cessation of the operation of the facility as a facility which produces 15 parts per million or less sulfur diesel after the applicable period.

“(C) CHANGE IN OWNERSHIP.—

“(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a small business refiner’s interest in the facility with respect to which the credit described in subsection (a) was allowable.

“(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

“(4) SPECIAL RULES.—

“(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

“(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

“(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

“(g) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.”

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit) is amended by striking “plus” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “, plus”, and by adding at the end the following new paragraph:

“(18) in the case of a small business refiner, the environmental tax credit determined under section 45I(a).”

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding after subsection (d) the following new subsection:

“(e) ENVIRONMENTAL TAX CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45I(a).”

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis) is amended by striking “and” at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting “, and”, and by adding at the end the following new paragraph:

“(35) in the case of a facility with respect to which a credit was allowed under section 45I, to the extent provided in section 45I(d).”

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

“Sec. 45I. Environmental tax credit.”

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after the date of the enactment of this Act.

SEC. 206. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to certain refiners excluded) is amended to read as follows:

“(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and the related person for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be deter-

mined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 207. TAX-EXEMPT BOND FINANCING OF CERTAIN ELECTRIC FACILITIES.

(a) **IN GENERAL.**—Subpart A of part IV of subchapter B of chapter 1 (relating to tax exemption requirements for State and local bonds) is amended by inserting after section 141 the following new section:

“SEC. 141A. TREATMENT OF GOVERNMENT-OWNED ELECTRIC OUTPUT FACILITIES.

“(a) EXCEPTIONS FROM PRIVATE BUSINESS USE LIMITATIONS WHERE OPEN ACCESS REQUIREMENTS MET.—

“(1) GENERAL RULE.—For purposes of this part, the term ‘private business use’ shall not include—

“(A) any permitted open access activity by a governmental unit with respect to an electric output facility owned by such unit, or

“(B) any permitted sale of electricity by a governmental unit which is generated at an existing generation facility owned by such unit.

“(2) PERMITTED OPEN ACCESS ACTIVITY.—For purposes of this section—

“(A) IN GENERAL.—The term ‘permitted open access activity’ means any activity meeting the open access requirements of any of the following clauses with respect to such electric output facility:

“(i) TRANSMISSION AND ANCILLARY FACILITY.—In the case of a transmission facility or a facility providing ancillary services, the provision of transmission service and ancillary services meets the open access requirements of this clause only if such services are provided on a non-discriminatory open access basis—

“(I) pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff, or

“(II) under a regional transmission organization agreement approved by FERC.

“(ii) DISTRIBUTION FACILITIES.—In the case of a distribution facility, the delivery of electric energy meets the open access requirements of this clause only if such delivery is made on a nondiscriminatory open access basis.

“(iii) GENERATION FACILITIES.—In the case of a generation facility, the delivery of electric energy generated by such facility meets the open access requirements of this clause only if—

“(I) such facility is directly connected to distribution facilities owned by the governmental unit which owns the generation facility, and

“(II) such distribution facilities meet the open access requirements of clause (ii).

“(B) SPECIAL RULES.—

“(i) VOLUNTARILY FILED TARIFFS.—Subparagraph (A)(i)(I) shall apply in the case of a voluntarily filed tariff only if the governmental unit files a report with FERC within 90 days after the date of the enactment of this section relating to whether or not such governmental unit will join a regional transmission organization.

“(ii) CONTROL OF TRANSMISSION FACILITIES BY REGIONAL TRANSMISSION ORGANIZATION.—A governmental unit shall be treated as meeting the open access requirements of subparagraph (A)(i) if a regional transmission organization controls the transmission facilities.

“(iii) ERCOT UTILITY.—References to FERC in subparagraph (A) shall be treated as references to the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

“(3) PERMITTED SALE.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘permitted sale’ means—

“(i) any sale of electricity to an on-system purchaser if the seller meets the open access requirements of paragraph (2) with respect to all distribution and transmission facilities (if any) owned by such seller, and

“(ii) subject to subparagraphs (B) and (C), any sale of electricity to a wholesale native load purchaser, and any load loss sale, if—

“(I) the seller meets the open access requirements of paragraph (2) with respect to all transmission facilities (if any) owned by such seller, or

“(II) in any case in which the seller does not own any transmission facilities, all persons providing transmission services to the seller’s wholesale native load purchasers meet the open access requirements of paragraph (2) with respect to all transmission facilities owned by such persons.

“(B) LIMITATION ON SALES TO WHOLESALE NATIVE LOAD PURCHASERS.—A sale to a wholesale native load purchaser shall be treated as a permitted sale only to the extent that—

“(i) such purchaser resells the electricity directly at retail to persons within the purchaser’s distribution area, or

“(ii) such electricity is resold by such purchaser through one or more wholesale purchasers (each of whom as of June 30, 2000, was a party to a requirements contract or a firm power contract described in paragraph (5)(B)(ii)) to retail purchasers in the ultimate wholesale purchaser’s distribution area.

“(C) LOAD LOSS SALES.—

“(i) IN GENERAL.—The term ‘load loss sale’ means any sale at wholesale to the extent that—

“(I) the aggregate sales at wholesale during the recovery period does not exceed the load loss mitigation sales limit for such period, and

“(II) the aggregate sales at wholesale during the first calendar year after the recovery period does not exceed the excess carried under clause (iv) to such year.

“(ii) LOAD LOSS MITIGATION SALES LIMIT.—For purposes of clause (i), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

“(iii) ANNUAL LOAD LOSS.—A governmental unit’s annual load loss for each year of the recovery period is the amount (if any) by which—

“(I) the megawatt hours of electric energy sold during such year to wholesale native load purchasers which do not constitute private business use are less than

“(III) the megawatt hours of electric energy sold during the base year to wholesale native load purchasers which do not constitute private business use.

The annual load loss for any year shall not exceed the portion of the amount determined under the preceding sentence which is attributable to open access requirements.

“(iv) CARRYOVERS.—If the limitation under clause (i) for the recovery period exceeds the aggregate sales during such period which are taken into account under clause (i), such excess (but not more than 10 percent of such limitation) may be carried over to the first calendar year following the recovery period.

“(v) RECOVERY PERIOD.—The recovery period is the 7-year period beginning with the start-up year.

“(vi) START-UP YEAR.—The start-up year is the calendar year which includes the date of the enactment of this section or, if later, at the election of the governmental unit—

“(I) the first year that the governmental unit offers nondiscriminatory open transmission access, or

“(II) the first year in which at least 10 percent of the governmental unit’s wholesale customers’ aggregate retail native load is open to retail competition.

“(4) ON-SYSTEM PURCHASER.—For purposes of this section, the term ‘on-system purchaser’ means any person whose electric equipment is directly connected with any transmission or distribution facility owned by the governmental unit owning the existing generation facility if—

“(A) such person—

“(i) purchases electric energy from such governmental unit at retail, and

“(ii)(I) was within such unit’s distribution area at the close of the base year or

“(II) is a person as to whom the governmental unit has a statutory service obligation, or

“(B) is a wholesale native load purchaser from such governmental unit.

“(5) WHOLESALE NATIVE LOAD PURCHASER.—For purposes of this section—

“(A) IN GENERAL.—The term ‘wholesale native load purchaser’ means a wholesale purchaser as to whom the governmental unit had—

“(i) a statutory service obligation at wholesale at the close of the base year, or

“(ii) an obligation at the close of the base year under a requirements or firm sales contract if, as of June 30, 2000, such contract had been in effect for (or had an initial term of) at least 10 years.

“(B) PERMITTED SALES UNDER EXISTING CONTRACTS.—A private business use sale during any year to a wholesale native load purchaser (other than a person to whom the governmental unit had a statutory service obligation) under a contract shall be treated as a permitted sale by reason of being a load loss sale only to the extent that the private business use sales under the contract during such year exceed the lesser of—

“(i) the private business use sales under the contract during the base year, or

“(ii) the maximum private business use sales which would (but for this section) be permitted without causing the bonds to be private activity bonds.

This subparagraph shall only apply to the extent that the sale is allocable to bonds issued before the date of the enactment of this section (or bonds issued to refund such bonds).

“(6) SPECIAL RULES.—

“(A) TIME OF SALE RULE.—For purposes of paragraphs (3)(C)(iii) and (5)(B), the determination of whether a sale after the date of the enactment of this section is a private business use shall be made with regard to this section.

“(B) JOINT ACTION AGENCIES.—To the extent provided in regulations, a joint action agency, or a member of (or a wholesale native load purchaser from) a joint action agency, which is entitled to make a sale described in subparagraph (A) or (B) in a year, may transfer the entitlement to make that sale to the member (or purchaser), or the joint action agency, respectively.

“(b) CERTAIN BONDS FOR TRANSMISSION AND DISTRIBUTION FACILITIES NOT TAX EXEMPT.—

“(1) IN GENERAL.—Section 103 shall not apply to any bond issued on or after the date of the enactment of this section if any portion of the proceeds of the issue of which such bond is a part is used (directly or indirectly) to finance—

“(A) any electric transmission facility, or

“(B) any start-up electric utility distribution facility.

“(2) EXCEPTIONS RELATING TO TRANSMISSION FACILITIES.—Paragraph (1)(A) shall not apply to any bond issued to finance—

“(A) any repair of a transmission facility in service on the date of the enactment of this section, so long as the repair does not—

“(i) increase the voltage level of such facility over its level at the close of the base year, or

“(ii) increase the thermal load limit of such facility by more than 3 percent over such limit at the close of the base year,

“(B) any qualifying upgrade of an electric transmission facility in service on the date of the enactment of this section, or

“(C) any transmission facility necessary to comply with an obligation under a shared or reciprocal transmission agreement in effect on such date.

“(3) EXCEPTION FOR LOCAL ELECTRIC TRANSMISSION FACILITY.—For purposes of this subsection—

“(A) IN GENERAL.—In the case of a governmental unit which owns distribution facilities, paragraph (1)(A) shall not apply to any bond issued to finance an electric transmission facility owned by such governmental unit and located within such governmental unit’s distribution area, but only to the extent such facility is, or will be, necessary to supply electricity to serve the retail native load, or wholesale native load, of such governmental unit or of 1 or more other governmental units owning distribution facilities which are directly connected to such electric transmission facility.

“(B) RETAIL LOAD.—The term ‘retail load’ means, with respect to a governmental unit, the electric load of end-users in the distribution area of the governmental unit.

“(C) WHOLESALE NATIVE LOAD.—The term ‘wholesale native load’ means—

“(i) the retail load of such unit’s wholesale native load purchasers (or of an ultimate wholesale purchaser described in subsection (a)(3)(B)(ii)), and

“(ii) the electric load of purchasers (not described in clause (i)) under wholesale requirements contracts which—

“(I) do not constitute private business use (determined without regard to this section), and

“(II) were in effect in the base year.

“(D) NECESSARY TO SERVE LOAD.—For purposes of determining whether a transmission facility is, or will be, necessary to supply electricity to retail native load or wholesale native load—

“(i) the governmental unit’s available transmission rights shall be taken into account,

“(ii) electric reliability standards or requirements of national or regional reliability organizations, regional transmission organizations and the Electric Reliability Council of Texas shall be taken into account, and

“(iii) transmission, siting and construction decisions of regional transmission organizations and State and Federal regulatory and siting agencies, after a proceeding that provides for public input, shall be presumptive evidence regarding whether transmission facilities are necessary to serve native load.

“(E) QUALIFYING UPGRADE.—The term ‘qualifying upgrade’ means an improvement or addition to transmission facilities of the governmental unit in service on the date of the enactment of this section which—

“(i) is ordered or approved by a regional transmission organization or by a State regulatory or siting agency, after a proceeding that provides for public input, and

“(ii) is, or will be, necessary to supply electricity to serve the retail native load, or wholesale native load, of such governmental unit or of one or more governmental units owning distribution facilities which are directly connected to such transmission facility.

“(4) START-UP ELECTRIC UTILITY DISTRIBUTION FACILITY DEFINED.—For purposes of this subsection, the term ‘start-up electric utility distribution facility’ means any distribution facility to provide electric service for sale to the public if such facility is placed in service—

“(A) by a governmental unit that did not operate an electric utility on the date of the enactment of this section, and

“(B) during the first 10 years after the date such governmental unit begins operating an electric utility.

A governmental unit is treated as having operated an electric utility on the date of the enactment of this section if it operates electric output facilities which were (on such date) operated by another governmental unit to provide electric service for sale to the public.

“(5) EXCEPTION FOR REFUNDING BONDS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any eligible refunding bond.

“(B) ELIGIBLE REFUNDING BOND.—For purposes of subparagraph (A), the term ‘eligible refunding bond’ means any bond (or series of bonds) issued to refund any bond issued before the date of the enactment of this section if the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue.

“(c) DEFINITIONS; SPECIAL RULES.—For purposes of this section—

“(1) BASE YEAR.—The term ‘base year’ means—

“(A) the calendar year preceding the start-up year, or

“(B) at the election of the governmental unit, the second or third calendar years preceding the start-up year.

“(2) DISTRIBUTION AREA.—The term ‘distribution area’ means the area in which a governmental unit owns distribution facilities.

“(3) ELECTRIC OUTPUT FACILITY.—The term ‘electric output facility’ means an output facility that is an electric generation, transmission, or distribution facility.

“(4) DISTRIBUTION FACILITY.—The term ‘distribution facility’ means an electric output facility that is not a generation or transmission facility.

“(5) TRANSMISSION FACILITY.—The term ‘transmission facility’ means an electric output facility (other than a generation facility) that operates at an electric voltage of 69 kV or greater. To the extent provided in regulations, such term includes any output facility that FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act (as in effect on the date of the enactment of this section).

“(6) EXISTING GENERATION FACILITY.—

“(A) IN GENERAL.—The term ‘existing generation facility’ means any electric generation facility if—

“(i) such facility is originally placed in service on or before the date of enactment of this Act and is owned by any governmental unit on such date, or

“(ii) such facility is originally placed in service after such date if the construction of the facility commenced before June 1, 2000, and such facility is owned by any governmental unit when it is placed in service.

“(B) DENIAL OF TREATMENT TO EXPANSIONS.—Such term shall not include any facility to the extent the generating capacity of such facility as of any date is 3 percent above the greater of its nameplate or rated capacity as of the date of the enactment of this section (or, in the case of a facility described in subparagraph (A)(ii), the date that the facility is placed in service).

“(7) REGIONAL TRANSMISSION ORGANIZATION.—The term ‘regional transmission organization’ includes an independent system operator.

“(8) FERC.—The term ‘FERC’ means the Federal Energy Regulatory Commission.

“(9) GOVERNMENT-OWNED FACILITY.—An electric transmission facility shall be treated as owned by a governmental unit as of any date to the extent that—

“(A) such unit acquired (before the base year) long-term firm transmission capacity (as determined under regulations) of such facility for the purposes of serving customers to which such unit had at the close of the base year—

“(i) a statutory service obligation, or

“(ii) an obligation under a requirements contract, and

“(B) such unit holds such capacity as of such date.

“(10) STATUTORY SERVICE OBLIGATION.—The term ‘statutory service obligation’ means an obligation under State or Federal law (exclusive of an obligation arising solely under a contract entered into with a person) to provide electric distribution services or electric sales services, as provided in such law.

“(11) CONTRACT MODIFICATIONS.—A material modification of a contract shall be treated as a new contract.

“(d) ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILITIES.—

“(1) IN GENERAL.—At the election of a governmental unit, section 103(a) shall not apply to any bond issued by or on behalf of such unit after the date of such election if any portion of the proceeds of the issue of which such bond is a part are used to provide any electric output facilities. Such an election, once made, shall be irrevocable.

“(2) OTHER EFFECTS OF ELECTION.—During the period that the election under paragraph (1) is in effect with respect to a governmental unit, the term ‘private activity bond’ shall not include—

“(A) any bond issued by such unit before the date of the enactment of this section to provide an electric output facility if, as of the date of the election, such bond was not a private activity bond, and

“(B) any bond to which paragraph (1) does not apply by reason of paragraph (3).

“(3) EXCEPTIONS FOR CERTAIN PROPERTY.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any bond issued to provide property owned by a governmental unit if such property is—

“(i) any qualifying transmission facility,

“(ii) any qualifying distribution facility,

“(iii) any facility necessary to meet Federal or State environmental requirements applicable to an existing generation facility owned by the governmental unit as of the date of the election,

“(iv) any property to repair any existing generation facility owned by the governmental unit as of the date of the election,

“(v) any qualified facility (as defined in section 45(c)(3)) producing electricity from any qualified energy resource (as defined in section 45(c)(1)), and

“(vi) any energy property (as defined in section 48(a)(3)) placed in service during a period that the energy percentage under section 48(a) is greater than zero.

“(B) LIMITATION ON USE BY NONGOVERNMENTAL PERSONS.—Subparagraph (A) shall not apply to any property constructed, acquired or financed for a principal purpose of providing the facility (or the output thereof) to nongovernmental persons.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) QUALIFYING DISTRIBUTION FACILITY.—The term ‘qualifying distribution facility’ means a distribution facility meeting the open access requirements of subsection (a)(2)(A)(ii).

“(B) QUALIFYING TRANSMISSION FACILITY.—The term ‘qualifying transmission facility’ means a local transmission facility (as defined in subsection (b)(3)) meeting the open access requirements of subsection (a)(2)(A)(i).

“(5) EFFECT OF ELECTION.—

“(A) IN GENERAL.—An election under paragraph (1) shall be binding on any successor in interest to, or any related party with respect to, the electing governmental unit. For purposes of this paragraph, a governmental unit shall be treated as related to another governmental unit if it is a member of the same controlled group (as determined under regulations).

“(B) TREATMENT OF ELECTING GOVERNMENTAL UNIT.—A governmental unit which makes an election under paragraph (1) shall be treated for purposes of section 141 as a person—

“(i) which is not a governmental unit, and

“(ii) which is engaged in a trade or business,

with respect to its purchase of electricity generated by an electric output facility placed in service after the date of such election if such purchase is under a contract executed after such date.”

(b) WAIVER OF CERTAIN LIMITATIONS NOT TO APPLY TO DISTRIBUTION FACILITIES.—Section 141(d)(5) is amended by inserting “(except in the case of an electric output facility that is a distribution facility)” after “this subsection”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter B of chapter 1 is amended by inserting after the item relating to section 141 the following new item:

“Sec. 141A. Treatment of government-owned electric output facilities.”

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that a governmental unit may elect to have section 141A(a)(1) of the Internal Revenue Code of 1986, as added by subsection (a), take effect on April 14, 1996.

(2) BINDING CONTRACTS.—The amendment made by subsection (b) (relating to waiver of certain limitations not to apply to distribution facilities) shall not apply to facilities acquired pursuant to a contract which was entered into before the date of the enactment of this Act and which was binding on such date and at all times thereafter before such acquisition.

(3) COMPARABLE TREATMENT TO BONDS UNDER 1954 CODE RULES.—References in the amendments made by this Act to sections of the Internal Revenue Code of 1986 shall be deemed to include references to comparable sections of the Internal Revenue Code of 1954.

SEC. 208. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 1033 (relating to involuntary conversions) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

“(k) SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

“(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction—

“(A) such transaction shall be treated as an involuntary conversion to which this section applies, and

“(B) exempt utility property shall be treated as property which is similar or related in service or use to the property disposed of in such transaction.

“(2) EXTENSION OF REPLACEMENT PERIOD.—In the case of any involuntary conversion described in paragraph (1), subsection (a)(2)(B) shall be applied by substituting ‘4 years’ for ‘2 years’ in clause (i) thereof.

“(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term ‘qualifying electric transmission transaction’ means any sale or other disposition before January 1, 2009, of—

“(A) property used in the trade or business of providing electric transmission services, or

“(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services, but only if such sale or disposition is to an independent transmission company.

“(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term ‘independent transmission company’ means—

“(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

“(B) a person—

“(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 823b) is not a market participant within the meaning of such Commission’s rules applicable to regional transmission organizations, and

“(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

“(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

“(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘exempt utility property’ means property used in the trade or business of—

“(i) generating, transmitting, distributing, or selling electricity, or

“(ii) producing, transmitting, distributing, or selling natural gas.

“(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this section with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

“(6) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, such corporation shall be treated as satisfying the purchase requirement of subsection (a)(2) with respect to any qualifying electric transmission transaction engaged in by such corporation to the extent such requirement is satisfied by another member of such group.

“(7) ELECTION.—An election under paragraph (1), once made, shall be irrevocable.”

(b) EXCEPTION FROM GAIN RECOGNITION UNDER SECTION 1245.—Subsection (b) of section 1245 is amended by adding at the end the following new paragraph:

“(9) DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—At the election of the taxpayer, the amount of gain which would (but for this paragraph) be recognized under this section on any qualified electric transmission transaction (as defined in section 1033(k)) for which an election under section 1033 is made shall be reduced by the aggregate reduction in the basis of section 1245 property held by the taxpayer or, if insufficient, by a member of an affiliated group which includes the taxpayer at any time during the taxable year in which such transaction occurred. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 209. DISTRIBUTIONS OF STOCK TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Subparagraph (A) of section 355(e)(3) (relating to special rules relating to acquisitions) is amended by inserting after clause (iv) the following new clause:

“(v) The acquisition of stock in any controlled corporation in a qualifying electric transmission transaction (as defined in section 1033(k)).”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

SEC. 210. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A is amended to read as follows:

“(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

“(1) IN GENERAL.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

“(2) CONTRIBUTIONS AFTER FUNDING PERIOD.—Notwithstanding any other provision of this section, a taxpayer may pay into the Fund in any taxable year after the last taxable year to which the ruling amount applies. Payments may not be made under the preceding sentence to the extent such payments would cause the assets of the Fund to exceed the nuclear decommissioning costs allocable to the taxpayer’s current or former interest in the nuclear powerplant to which the Fund relates. The limitation under the preceding sentence shall be determined by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.”.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Subsection (e) of section 468A is amended by adding at the end the following new paragraph:

“(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer’s interest in a nuclear powerplant, the taxpayer transfers the Fund with respect to such powerplant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

“(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

“(B) no amount shall be treated as distributed from such Fund, or be includible in gross income, by reason of such transfer.”.

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

“(f) TRANSFERS INTO QUALIFIED FUNDS.—

“(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear powerplant may transfer into such Fund up to an amount equal to the excess of the total nuclear decommissioning costs with respect to such nuclear powerplant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

“(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

“(A) IN GENERAL.—The deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear powerplant beginning with the taxable year during which the transfer is made.

“(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

“(C) TRANSFERS OF QUALIFIED FUNDS.—If—

“(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

“(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferee and not to the transferor. The preceding sentence shall not apply if the transferor is an organization exempt from tax imposed by this chapter.

“(D) SPECIAL RULES.—

“(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

“(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall be the adjusted basis of such property.

“(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

“(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer’s basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.”.

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) is amended to read as follows:

“(A) fund the total nuclear decommissioning costs with respect to such powerplant over the estimated useful life of such powerplant, and”.

(d) DEDUCTION FOR NUCLEAR DECOMMISSIONING COSTS WHEN PAID.—Paragraph (2) of section 468A(c) is amended to read as follows:

“(2) DEDUCTION OF NUCLEAR DECOMMISSIONING COSTS.—In addition to any deduction under subsection (a), nuclear decommissioning costs paid or incurred by the taxpayer during any taxable year shall constitute ordinary and necessary expenses in carrying on a trade or business under section 162.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 211. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking “or” at the end of clause (i), by striking the period at the end of clause (ii) and inserting a comma, and by adding at the end the following new clauses:

“(iii) from any open access transaction (other than income received or accrued directly or indirectly from a member), or

“(iv) from any nuclear decommissioning transaction.”

(2) DEFINITIONS.—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraph:

“(E) For purposes of subparagraph (C)—

“(i) The term ‘open access transaction’ means any activity which would be a permitted open access activity (as defined in section 141A(a)(2)) if the cooperative were a governmental unit.

“(ii) The term ‘nuclear decommissioning transaction’ means—

“(I) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative’s interest in a nuclear powerplant or nuclear powerplant unit,

“(II) any distribution from such a trust, fund, or instrument, or

“(III) any earnings from such a trust, fund, or instrument.”

(b) INCOME FROM LOAD LOSS TRANSACTIONS TREATED AS MEMBER INCOME.—Paragraph (12) of section 501(c) is amended by adding after subparagraph (E) the following new subparagraph:

“(F)(i) In the case of a mutual or cooperative electric company, income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

“(ii) For purposes of clause (i), the term ‘load loss transaction’ means any sale (whether at wholesale or at retail) which would be a load loss sale under rules similar to the rules of section 141A(3)(C).

“(iii) A company shall not fail to be treated as a mutual cooperative company for purposes of this paragraph by reason of the treatment under clause (i).

“(iv) A rule similar to the rule of this subparagraph shall apply to an organization to which section 1381 does not apply by reason of section 1381(a)(2)(C).”

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

“(18) TREATMENT OF LOAD LOSS SALES OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (F) thereof.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 212. REPEAL OF REQUIREMENT OF CERTAIN APPROVED TERMINALS TO OFFER DYED DIESEL FUEL AND KEROSENE FOR NONTAXABLE PURPOSES.

Section 4101 (relating to certain approved terminals of registered persons required to offer dyed diesel fuel and kerosene for nontaxable purposes) is amended by striking subsection (e).

SEC. 213. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Subsection (b) of section 148 (defining higher yielding investments) is amended by adding at the end the following new paragraph:

“(4) EXCEPTION FOR CERTAIN PREPAYMENTS TO ENSURE NATURAL GAS SUPPLY.—The term ‘investment property’ shall not include any prepayment for the purpose of obtaining a supply of a natural gas—

“(A) at least 85 percent of which is to be used in the State in which the issuer is located, and

“(B) which is to be used in a business of one or more utilities each of which is owned and operated by a State or local government, any political subdivision or instrumentality thereof, or any governmental unit acting for or on behalf of such a utility.”.

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of section 141(c) (providing exceptions to the private loan financing test) is amended by striking “or” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, or”, and by adding at the end the following new subparagraph:

“(C) arises from a transaction described in section 148(b)(4).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after October 22, 1986; except that section 148(b)(4)(A) of the Internal Revenue Code of 1986, as added by this section, shall apply only to obligations issued after the date of the enactment of this Act.

TITLE III—PRODUCTION

SEC. 301. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits) is amended by adding at the end the following:

“SEC. 45J. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

“(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

“(1) the credit amount, and

“(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

“(b) CREDIT AMOUNT.—For purposes of this section—

“(1) IN GENERAL.—The credit amount is—

“(A) \$3 per barrel of qualified crude oil production, and

“(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

“(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

“(A) IN GENERAL.—The \$3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

“(i) the excess (if any) of the applicable reference price over \$15

(\$1.67 for qualified natural gas production), bears to

“(ii) \$3 (\$0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

“(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2001, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting ‘2000’ for ‘1990’).

“(C) REFERENCE PRICE.—For purposes of this paragraph, the term ‘reference price’ means, with respect to any calendar year—

“(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

“(ii) in the case of qualified natural gas production, the Secretary’s estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

“(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

“(1) IN GENERAL.—The terms ‘qualified crude oil production’ and ‘qualified natural gas production’ mean domestic crude oil or natural gas which is produced from a qualified marginal well.

“(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

“(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

“(B) PROPORTIONATE REDUCTIONS.—

“(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to re-

flect the ratio which the number of days in such taxable year bears to 365.

“(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

“(3) DEFINITIONS.—

“(A) QUALIFIED MARGINAL WELL.—The term ‘qualified marginal well’ means a domestic well—

“(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

“(ii) which, during the taxable year—

“(I) has average daily production of not more than 25 barrel equivalents, and

“(II) produces water at a rate not less than 95 percent of total well effluent.

“(B) CRUDE OIL, ETC.—The terms ‘crude oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have the meanings given such terms by section 613A(e).

“(C) BARREL EQUIVALENT.—The term ‘barrel equivalent’ means, with respect to natural gas, a conversion ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

“(d) OTHER RULES.—

“(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer’s revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

“(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

“(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.

“(4) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of subsection (c)(3)(A), a marginal well which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualified marginal well during such period.”.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) is amended by striking “plus” at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting “, plus”, and by adding at the end the following:

“(19) the marginal oil and gas well production credit determined under section 45J(a).”.

(c) CARRYBACK.—Subsection (a) of section 39 (relating to carryback and carryforward of unused credits generally) is amended by adding at the end the following:

“(3) 10-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—In the case of the marginal oil and gas well production credit—

“(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

“(B) paragraph (1) shall be applied by substituting ‘10 taxable years’ for ‘1 taxable years’ in subparagraph (A) thereof, and

“(C) paragraph (2) shall be applied—

“(i) by substituting ‘31 taxable years’ for ‘21 taxable years’ in subparagraph (A) thereof, and

“(ii) by substituting ‘30 taxable years’ for ‘20 taxable years’ in subparagraph (A) thereof.”.

(d) COORDINATION WITH SECTION 29.—Section 29(a) is amended by striking “There” and inserting “At the election of the taxpayer, there”.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter I is amended by adding at the end the following:

“Sec. 45J. Credit for producing oil and gas from marginal wells.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2001.

SEC. 302. TEMPORARY SUSPENSION OF LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME AND EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.

(a) **LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME.**—Subsection (d) of section 613A (relating to limitation on percentage depletion in case of oil and gas wells) is amended by adding at the end the following new paragraph:

“(6) **TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT.**—Paragraph (1) shall not apply to taxable years beginning after December 31, 2001, and before January 1, 2007, including with respect to amounts carried under the second sentence of paragraph (1) to such taxable years.”.

(b) **EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.**—Subparagraph (H) of section 613A(c)(6) (relating to temporary suspension of taxable income limit with respect to marginal production) is amended by striking “2002” and inserting “2007”.

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 303. DEDUCTION FOR DELAY RENTAL PAYMENTS.

(a) **IN GENERAL.**—Section 263 (relating to capital expenditures) is amended by adding after subsection (i) the following:

“(j) **DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.**—

“(1) **IN GENERAL.**—Notwithstanding subsection (a), a taxpayer may elect to treat delay rental payments incurred in connection with the development of oil or gas within the United States (as defined in section 638) as payments which are not chargeable to capital account. Any payments so treated shall be allowed as a deduction in the taxable year in which paid or incurred.

“(2) **DELAY RENTAL PAYMENTS.**—For purposes of paragraph (1), the term ‘delay rental payment’ means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.”.

(b) **CONFORMING AMENDMENT.**—Section 263A(c)(3) is amended by inserting “263(j),” after “263(i).”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2001.

SEC. 304. ELECTION TO EXPENSE GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) **IN GENERAL.**—Section 263 (relating to capital expenditures) is amended by adding after subsection (j) the following:

“(k) **GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR DOMESTIC OIL AND GAS WELLS.**—Notwithstanding subsection (a), a taxpayer may elect to treat geological and geophysical expenses incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) as expenses which are not chargeable to capital account. Any expenses so treated shall be allowed as a deduction in the taxable year in which paid or incurred.”.

(b) **CONFORMING AMENDMENT.**—Section 263A(c)(3), as amended by section 303(b), is amended by inserting “263(k),” after “263(j).”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2001.

SEC. 305. 5-YEAR NET OPERATING LOSS CARRYBACK FOR LOSSES ATTRIBUTABLE TO OPERATING MINERAL INTERESTS OF OIL AND GAS PRODUCERS.

(a) **IN GENERAL.**—Paragraph (1) of section 172(b) (relating to years to which loss may be carried) is amended by adding at the end the following new subparagraph:

“(H) **LOSSES ON OPERATING MINERAL INTERESTS OF OIL AND GAS PRODUCERS.**—In the case of a taxpayer which has an eligible oil and gas loss (as defined in subsection (j)) for a taxable year, such eligible oil and gas loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.”.

(b) **ELIGIBLE OIL AND GAS LOSS.**—Section 172 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) **ELIGIBLE OIL AND GAS LOSS.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘eligible oil and gas loss’ means the lesser of—

“(A) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to operating mineral interests (as defined in section 614(d)) in oil and gas wells are taken into account, or

“(B) the amount of the net operating loss for such taxable year.

“(2) **COORDINATION WITH SUBSECTION (b)(2).**—For purposes of applying subsection (b)(2), an eligible oil and gas loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

- “(3) ELECTION.—Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(H) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(H).”.
- (c) EFFECTIVE DATE.—The amendments made by this section shall apply to net operating losses for taxable years beginning after December 31, 2001.

SEC. 306. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NON-CONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 is amended by adding at the end the following new subsection:

“(h) EXTENSION FOR OTHER FACILITIES.—

“(1) EXTENSION FOR OIL AND CERTAIN GAS.—In the case of a well for producing qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1)—

“(A) APPLICATION OF CREDIT FOR NEW WELLS.—Notwithstanding subsection (f), this section shall apply with respect to such fuels—

“(i) which are produced from a well drilled after the date of the enactment of this subsection and before January 1, 2007, and

“(ii) which are sold not later than the close of the 4-year period beginning on the date that such well is drilled, or, if earlier, January 1, 2010.

“(B) EXTENSION OF CREDIT FOR OLD WELLS.—Subsection (f)(2) shall be applied by substituting ‘2007’ for ‘2003’ with respect to wells described in subsection (f)(1)(A) with respect to such fuels.

“(2) EXTENSION FOR FACILITIES PRODUCING QUALIFIED FUEL FROM LANDFILL GAS.—

“(A) IN GENERAL.—In the case of a facility for producing qualified fuel from landfill gas which was placed in service after June 30, 1998, and before January 1, 2007, this section shall apply to fuel produced at such facility during the 5-year period beginning on the later of—

“(i) the date such facility was placed in service, or

“(ii) the date of the enactment of this subsection.

“(B) REDUCTION OF CREDIT FOR CERTAIN LANDFILL FACILITIES.—In the case of a facility to which paragraph (1) applies and which is subject to the 1996 New Source Performance Standards/Emissions Guidelines of the Environmental Protection Agency, subsection (a)(1) shall be applied by substituting ‘\$2’ for ‘\$3’.

“(3) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

“(A) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

“(B) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT.—In the case of fuels sold during 2001 and 2002, the dollar amount applicable under subsection (a)(1) shall be \$3 (without regard to subsection (b)(2)). In the case of fuels sold after 2002, subparagraph (B) of subsection (d)(2) shall be applied by substituting ‘2002’ for ‘1979’.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuel sold after the date of the enactment of this Act.

SEC. 307. BUSINESS RELATED ENERGY CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) SPECIAL RULES FOR SPECIFIED ENERGY CREDITS.—

“(A) IN GENERAL.—In the case of specified energy credits—

“(i) this section and section 39 shall be applied separately with respect to such credits, and

“(ii) in applying paragraph (1) to such credits—

“(I) the tentative minimum tax shall be treated as being zero, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified energy credits).

“(B) SPECIFIED ENERGY CREDITS.—For purposes of this subsection, the term ‘specified energy credits’ means the credits determined under sections 45G, 45H, 45I, 45J, and 45K.”.

(b) CONFORMING AMENDMENT.—Subclause (II) of section 38(c)(2)(A)(ii) is amended by inserting “or the specified energy credits” after “employment credit”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of enactment of this Act.

SEC. 308. TEMPORARY REPEAL OF ALTERNATIVE MINIMUM TAX PREFERENCE FOR INTANGIBLE DRILLING COSTS.

(a) IN GENERAL.—Clause (ii) of section 57(a)(2)(E) is amended by adding at the end the following new sentence: “The preceding sentence shall not apply to taxable years beginning after December 31, 2001, and before January 1, 2005.”

(b) EFFECTIVE DATES.—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 309. ALLOWANCE OF ENHANCED RECOVERY CREDIT AGAINST THE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(4) is amended by adding at the end the following new sentence: “For taxable years beginning before January 1, 2005, such term includes the credit determined under section 43.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 310. EXTENSION OF CERTAIN BENEFITS FOR ENERGY-RELATED BUSINESSES ON INDIAN RESERVATIONS.

(a) DEPRECIATION FOR PROPERTY ON INDIAN RESERVATIONS.—Paragraph (8) of section 168(j) (relating to termination) is amended by adding at the end the following new sentence: “The preceding sentence shall be applied by substituting ‘December 31, 2006’ for ‘December 31, 2003’ in the case of property placed in service as part of a facility for—

“(A) the generation or transmission of electricity (including from any qualified energy resource, as defined in section 45(c)),

“(B) an oil or gas well,

“(C) the transmission or refining of oil or gas, or

“(D) the production of any qualified fuel (as defined in section 29(c)).”

(b) EMPLOYMENT OF INDIANS.—Subsection (f) of section 45A (relating to termination) is amended by adding at the end the following new sentence: “The preceding sentence shall be applied by substituting ‘December 31, 2006’ for ‘December 31, 2003’ in the case of wages paid for services performed at a facility described in section 168(j)(8).”

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 2511, as amended (the “Energy Tax Policy Act of 2001”), provides incentives for taxpayers to conserve energy, to enhance the reliability of domestic energy supplies, and to increase domestic supplies of energy.

The bill provides net tax reductions of over \$18.707 billion over fiscal years 2001–2006.

B. BACKGROUND AND NEED FOR LEGISLATION

The provisions approved by the Committee provide incentives for taxpayers to conserve energy, to convert to cleaner forms of energy, to enhance the reliability of domestic energy supplies, and to increase domestic supplies of energy. The estimated revenue effects of the provisions comply with the most recent Congressional Budget Office revisions of budget surplus projections.

C. LEGISLATIVE HISTORY

COMMITTEE ACTION

The Subcommittee on Oversight held hearings on March 5, 2001 on the impact of Federal tax laws on the cost and supply of energy. The Subcommittee on Select Revenue Measures held hearings on

May 3, June 12, and June 13, 2001 on the effect of Federal tax laws on the production, supply, and conservation of energy.

The Committee on Ways and Means marked up the provisions of the bill on July 18, 2001, and reported the provisions, as amended, on July 18, 2001, by a roll call vote, with a quorum present.

II. EXPLANATION OF THE BILL

TITLE I—CONSERVATION

A. TAX CREDIT FOR RESIDENTIAL SOLAR ENERGY

(Sec. 101 of the bill and New Sec. 25C of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above \$25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law personal tax credit for residential solar energy property.

REASONS FOR CHANGE

The Committee recognizes that residential energy use represents a large share of national energy consumption, and accordingly believes that measures to encourage alternative energy sources for residential use have the potential to substantially reduce national reliance on traditional energy sources. The Committee believes that a tax credit for investments in solar energy sources will help to achieve that goal. Furthermore, the Committee believes that the on-site generation of electricity and hot water will reduce reliance on the United States' electricity grid and on natural gas pipelines.

EXPLANATION OF PROVISION

The provision provides a personal tax credit for the purchase of qualified photovoltaic property and qualified solar water heating

property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 15 percent of qualified investment up to a maximum credit of \$2,000 for solar water heating property and \$2,000 for rooftop photovoltaic property. This credit is nonrefundable, and the adjusted basis of the property is reduced by the amount of the credit.

Qualifying solar water heating property means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified photovoltaic property is property that uses solar energy to generate electricity for use in a dwelling unit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures.

Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations.

EFFECTIVE DATE

The credit applies to purchases in taxable years ending after December 31, 2001 and before January 1, 2007 (January 1, 2009 in the case of qualified photovoltaic property).

B. EXTENSION AND MODIFICATION OF THE SECTION 45 ELECTRICITY PRODUCTION CREDIT

(Sec. 102 of the Bill and Sec. 45 of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from either qualified wind energy, qualified “closed-loop” biomass, or qualified poultry waste facilities (sec. 45). The amount of the credit is 1.5 cents per kilowatt hour (indexed for inflation) of electricity produced. The amount of the credit is 1.7 cents per kilowatt hour for 2001. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit applies to electricity produced by a wind energy facility placed in service after December 31, 1993, and before January 1, 2002, to electricity produced by a closed-loop biomass facility placed in service after December 31, 1992, and before January 1, 2002, and to a poultry waste facility placed in service after December 31, 1999, and before January 1, 2002. The credit is allowable for production during the 10-year period after a facility is originally placed in service. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee/operator of a facility owned by a governmental unit.

Closed-loop biomass is plant matter, where the plants are grown for the sole purpose of being used to generate electricity. It does not include waste materials (including, but not limited to, scrap wood, manure, and municipal or agricultural waste). The credit also is not available to taxpayers who use standing timber to

produce electricity. Poultry waste means poultry manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

The credit for electricity produced from wind, closed-loop biomass, or poultry waste is a component of the general business credit (sec. 38(b)(8)). The credit, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above \$25,000, or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39). To coordinate the carryback with the period of application for this credit, the credit for electricity produced from closed-loop biomass facilities may not be carried back to a tax year ending before 1993 and the credit for electricity produced from wind energy may not be carried back to a tax year ending before 1994 (sec. 39).

REASONS FOR CHANGE

The committee recognizes that the section 45 production credit has fostered additional electricity generation capacity in the form of non-polluting wind power. The committee believes it is important to continue this tax credit by extending the placed in service date for such facilities to bring more wind energy to the United States's electric grid.

Based on the success of the section 45 credit in the development of wind power as an alternative source of electricity generation, the committee further believes the country will benefit from the expansion of the production credit to certain other "environmentally friendly" sources of electricity generation. While open-loop biomass and landfill gas facilities are not pollution free, they do address environmental concerns related to waste disposal and, in the case of landfill gas, mitigate the release of methane gas into the atmosphere. In addition, these potential power sources further diversify the nation's energy supply.

Lastly, the committee believes that certain pre-existing facilities should qualify for the section 45 production credit, albeit at a reduced rate. These facilities previously received explicit subsidies, or implicit subsidies provided through rate regulation. In a deregulated electricity market, these facilities, and the environmental benefits they yield, may be uneconomic without additional economic incentive. The committee believes the benefits provided by such existing facilities warrant their inclusion in the section 45 production credit.

EXPLANATION OF PROVISION

The committee bill extends the placed-in-service date for wind facilities and closed-loop biomass facilities to facilities placed in service after December 31, 1993 (December 31, 1992 in the case of closed-loop biomass facilities) and before January 1, 2007.

The bill also defines two new qualifying facilities: open-loop biomass facilities and landfill gas facilities. Open-loop biomass is any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from any forest-

related resources, solid wood waste materials, or agricultural sources. Eligible forest-related resources are mill residues, precommercial thinnings, slash, and brush, but not including old-growth timber. Solid wood waste materials include waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings. Agricultural sources include orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues. However, qualifying open-loop biomass does not include municipal solid waste (garbage) or paper that is commonly recycled. Landfill gas is methane gas derived from the biodegradation of municipal solid waste. Qualifying open-loop biomass facilities and qualifying landfill gas facilities include facilities used to produce electricity placed in service before January 1, 2007.

In the case of qualifying open-loop biomass facilities and qualifying landfill gas facilities placed in service on or before the date of enactment, the taxpayer may claim the sec. 45 production credit for only five years, commencing on the date of enactment. In the case of qualifying open-loop biomass facilities and qualifying landfill gas facilities placed in service on or before the date of enactment, the taxpayer may claim two-thirds of the otherwise allowable credit for electricity produced at the facility.

In the case of qualifying open-loop biomass facilities, the reduction in the otherwise allowable credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits may not exceed 80 percent of the otherwise allowable credit.

The bill provides that no facility that previously claimed or currently claims credit under sec. 29 of the Code is a qualifying facility for purposes of sec. 45.

EFFECTIVE DATE

The provision is effective for electricity sold from qualifying facilities after the date of enactment.

C. TAX INCENTIVES FOR FUEL CELLS

(Sec. 103 of the Bill and New Sec. 25D of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above \$25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after De-

cember 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for stationary fuel cell power plant property.

REASONS FOR CHANGE

The Committee believes that investments in qualified stationary fuel cell power plants represent a promising means to produce electricity through non-polluting means and from nonconventional energy sources. Furthermore, the on-site generation of electricity provided by stationary fuel cell power plants will reduce reliance on the United States' electricity grid. The Committee believes that providing a tax credit for investment in qualified stationary fuel cell power plants will encourage investments in such systems.

EXPLANATION OF PROVISION

The provision provides a 10-percent credit for the purchase of qualified stationary fuel cell power plants for businesses and individuals. A qualified stationary fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent. The credit may not exceed \$1,000 for each kilowatt of capacity. For individuals, the qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence. The credit is non-refundable. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

EFFECTIVE DATE

The credit for businesses applies to property placed in service after December 31, 2001 and before January 1, 2007, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990). The credit for individuals applies to expenditures made after December 31, 2001 and before January 1, 2007.

D. MODIFICATIONS AND EXTENSIONS OF PROVISIONS RELATING TO
ELECTRIC VEHICLES, CLEAN-FUEL VEHICLES, AND CLEAN-FUEL
VEHICLE REFUELING PROPERTY

(Secs. 104, 105, and 106 of the Bill and Secs. 179A and 30 and New
Sec. 30B of the Code)

PRESENT LAW

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of \$4,000 (sec. 30). A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current, the original use of which commences with the taxpayer, and that is acquired for the use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to 2002. The credit phases down in the years 2002 through 2004, and is unavailable for purchases after December 31, 2004.

Certain costs of qualified clean-fuel vehicle property and clean-fuel vehicle refueling property may be expensed and deducted when such property is placed in service (sec. 179A). Qualified clean-fuel vehicle property includes motor vehicles that use certain clean-burning fuels (natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, any other alcohol or ether). The maximum amount of the deduction is \$50,000 for a truck or van with a gross vehicle weight over 26,000 pounds or a bus with seating capacities of at least 20 adults; \$5,000 in the case of a truck or van with a gross vehicle weight between 10,000 and 26,000 pounds; and \$2,000 in the case of any other motor vehicle. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction.

Clean-fuel vehicle refueling property comprises property for the storage or dispensing of a clean-burning fuel, if the storage or dispensing is the point at which the fuel is delivered into the fuel tank of a motor vehicle. Clean-fuel vehicle refueling property also includes property for the recharging of electric vehicles, but only if the property is located at a point where the electric vehicle is recharged. Up to \$100,000 of such property at each location owned by the taxpayer may be expensed with respect to that location.

The deduction phases down in the years 2002 through 2004, and is unavailable for purchases after December 31, 2004.

REASONS FOR CHANGE

The committee believes that automobile transportation in the United States in the 21st century can, and should, be less polluting of the air and more fuel efficient. The committee recognizes that various different technological solutions may lead to this result. The committee believes that tax benefits to lower the cost of new technology automotive alternatives can help lower consumer resistance to these technologies and speed the nation's advancement down the highway to cleaner, more efficient, automobiles. However, the committee believes no one technology has established that it alone provides the solution. Therefore, the committee concludes it

is appropriate to provide tax benefits tailored to each specific technology.

EXPLANATION OF PROVISION

Alternative motor vehicle credits

The bill provides a credit for the purchase of a new qualified fuel cell motor vehicle, a new qualified hybrid motor vehicle, a new qualified alternative fuel motor vehicle, and a new advanced lean burn technology motor vehicle.

Fuel cell motor vehicles.—The credit for the purchase of new qualified fuel cell motor vehicles generally ranges between \$4,000 and \$40,000 depending upon the weight class of the vehicle. For automobiles and light trucks, the otherwise allowable credit amount is increased by an amount from \$1,000 to \$4,000 depending upon the vehicle's fuel efficiency.

Hybrid vehicles.—The credit for the purchase of a new qualified hybrid vehicle generally ranges from \$250 to \$10,000 depending upon the weight of the vehicle and the maximum power available from the vehicle's battery system. For automobiles and light trucks, the otherwise allowable credit amount is increased by an amount from \$1,000 to \$3,500 depending upon the vehicle's fuel efficiency. For automobiles and light trucks, the otherwise allowable credit amount is increased by \$250 or \$500 if certain estimated lifetime fuel savings standards are met. For heavy duty hybrid vehicles, the otherwise allowable credit is increased by \$1,500 to \$14,000 depending upon the vehicle's weight, the vehicle's emissions performance, and the model year of the vehicle.

Alternative fuel vehicles.—The credit for the purchase of a new alternative fuel vehicle equals 50 percent of the incremental cost of such vehicle, plus an additional 30 percent if the vehicle meets certain emissions standards. For computation of the credit, incremental costs of the vehicle may not exceed between \$5,000 and \$40,000 depending upon the weight of the vehicle.

Advanced lean burn technology vehicles.—The credit for the purchase of a new advanced lean burn technology vehicle ranges between \$1,000 and \$4,000 depending upon the fuel efficiency of the vehicle. In the case of a vehicle that is eligible for the \$1,000 credit, the otherwise allowable credit amount is increased by \$250 or \$500 if certain estimated lifetime fuel savings standards are met.

Credit may not be claimed for qualified fuel cell vehicles purchased after December 31, 2011, and for any other vehicle purchased after December 31, 2007. The taxpayer's basis in the property is reduced by the amount of credit claimed.

Extension of present-law section 179A

The bill extends the deduction for costs of qualified clean-fuel vehicle property and clean-fuel vehicle refueling property through December 31, 2007. The phase-down of present law would begin in 2005.

Modification of credit for qualified electric vehicles

The bill modifies the present-law credit for electric vehicles to provide that the credit for qualifying vehicles generally ranges between \$4,000 and \$40,000 depending upon the weight of the vehi-

cle.¹ In the case of a vehicle with a gross vehicle weight rating less than or equal to 8,500 pounds and for which the taxpayer may otherwise claim a \$4,000 credit, the taxpayer may instead claim a \$5,000 credit if the vehicle is capable of a driving range of 70 miles or more on a single battery charge. The provision also extends the expiration date of the credit from December 31, 2004 to December 31, 2007 and repeals the phaseout schedule of present law.

EFFECTIVE DATE

The provision relating to the credit for new fuel cell vehicles, hybrid vehicles, alternative fuel vehicles, and advanced lean burn technology vehicles applies to property placed in service after December 31, 2001, in taxable years ending after December 31, 2001.

The provision relating to the extension of present-law section 179A is effective on the date of enactment.

The provision relating to the electric vehicle credit is effective for property placed in service after December 31, 2001, in taxable years ending after December 31, 2001.

E. TAX CREDIT FOR ENERGY-EFFICIENT APPLIANCES

(Sec. 107 of the Bill and New Sec. 45G of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment: (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat; or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of: (1) 25 percent of net regular tax liability above \$25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the manufacture of energy-efficient appliances.

¹In the case of a vehicle that conforms to the Department of Transportation's Motor Vehicle Safety Standard 500, the credit equals the lesser of 10 percent of the manufacturer's suggested retail price of the vehicle or \$4,000. The committee intends that vehicles qualifying for the credit by reason of conforming to the Department of Transportation's Motor Vehicle Safety Standard 500 would not otherwise qualify as a vehicle with gross weight less than 8,500 pounds and, thereby, eligible for a \$4,000 credit regardless of the manufacturer's suggested retail price.

REASONS FOR CHANGE

The Committee believes that providing a tax credit for the production of energy-efficient clothes washers and refrigerators will encourage manufacturers to produce such products currently and to invest in technologies to achieve higher energy-efficiency standards for the future.

EXPLANATION OF PROVISION

The provision provides a credit for the manufacture of certain energy-efficient clothes washers and refrigerators. The credit is \$50 per appliance for energy-efficient clothes washers manufactured with a modified energy factor ("MEF") of 1.26 or greater and for refrigerators that consume 10 percent less kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy for refrigerators produced during 2001. The credit is \$100 for energy-efficient clothes washers manufactured with a MEF of 1.42 or greater (1.5 or greater for washers produced after 2004) and for refrigerators that consume 15 percent less kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy for refrigerators produced during 2001. An energy-efficient refrigerator is an automatic defrost refrigerator-freezer with an internal volume of at least 16.5 cubic feet.

For each category of appliances (i.e., washers that meet the lower MEF standard, washers that meet the higher MEF standard, refrigerators that meet the 10 percent standard, refrigerators that meet the 15 percent standard), only production in excess of average production for each such category during calendar years 1998–2001 is eligible for the credit. Special proration rules for production in 2001. The taxpayer may not claim credits in excess of \$30 million for all taxable years for appliances that qualify for the \$50 credit, and may not claim credits in excess of \$30 million for all taxable years for appliances that qualify for the \$100 credit. Additionally, the credit allowed for all appliances may not exceed two percent of the average annual gross receipts of the taxpayer for the three taxable years preceding the taxable year in which the credit is determined. The present-law carry back rules of the general business credit generally apply except that no credit attributable to an energy-efficient appliance may be carried back before the effective date of this provision.

EFFECTIVE DATE

The credit applies to appliances produced after the date of enactment of the bill and prior to (1) January 1, 2005 in the case of refrigerators that only meet the 10 percent credit standard, or (2) January 1, 2007 in the case of all other qualified energy-efficient appliances.

F. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES

(Sec. 108 of the Bill and New Sec. 25E of the Code)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present law credit for energy efficiency improvements to existing homes.

REASONS FOR CHANGE

The Committee recognizes that residential energy use for heating and cooling represents a large share of national energy consumption, and accordingly believes that measures to reduce heating and cooling energy requirements have the potential to substantially reduce national energy consumption. The Committee further recognizes that many existing homes are inadequately insulated. Accordingly, the Committee believes that a tax credit for certain energy-efficiency improvements related to a home's envelope (exterior windows (including skylights) and doors, insulation, and certain roofing systems) will encourage homeowners to improve the insulation of their homes, which in turn will reduce national energy consumption.

EXPLANATION OF PROVISION

The provision provides a 20-percent nonrefundable credit for the purchase of qualified energy efficiency improvements. The maximum credit for a taxpayer with respect to the same dwelling for all taxable years is \$2,000. A qualified energy efficiency improvement is any energy efficiency building envelope component that meets or exceeds the prescriptive criteria for such a component established by the 1998 International Energy Conservation Code, and (1) that is installed in or on a dwelling located in the United States; (2) owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) such component reasonably can be expected to remain in use for at least five years. In the case of expenditures that exceed \$1,000, certain certification requirements must be met to establish that the energy efficiency standards have been met.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling; (2) exterior windows (including skylights) and doors; and (3) metal roofs with appropriate pigmented coating which are specifically and primarily designed to reduce the heat loss or gain for a dwelling.

The taxpayer's basis in the property is reduced by the amount of the credit. Special rules apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

EFFECTIVE DATE

The credit is effective for qualified energy efficiency improvements installed after December 31, 2001 and before January 1, 2007.

G. BUSINESS CREDIT FOR CONSTRUCTION OF NEW ENERGY-EFFICIENT HOMES

(Sec. 109 of the Bill and New Sec. 45H of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above \$25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the construction of new energy-efficient homes.

REASONS FOR CHANGE

The Committee recognizes that residential energy use for heating and cooling represents a large share of national energy consumption, and accordingly believes that measures to reduce heating and cooling energy requirements have the potential to substantially reduce national energy consumption. The Committee further recognizes that the most cost-effective time to properly insulate a home is when it is under construction. Accordingly, the Committee believes that a tax credit for the use of energy-efficiency components in a home's envelope (exterior windows (including skylights) and doors, insulation, and certain roofing systems) or heating and cooling appliances will encourage contractors to produce highly energy-efficient homes, which in turn will reduce national energy consumption.

EXPLANATION OF PROVISION

The provision provides a credit to an eligible contractor for energy-efficient property installed in a qualified new energy-efficient home during construction. The credit is equal to the aggregate adjusted bases of all qualified new energy-efficient property, subject to a \$2,000 limit per dwelling.

The eligible contractor is the person who constructs the home, or in the case of a manufactured home, the producer of such home. Energy efficiency property is any energy-efficient building envelope component (insulation materials, exterior windows and doors, metal roofs with appropriate pigmented coatings) and any energy-efficient heating or cooling appliance.

To qualify as an energy-efficient new home, the home must be: (1) a dwelling located in the United States; (2) the principal residence of the person who acquires the dwelling from the eligible contractor; and (3) certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 1998 International Energy Conservation Code. Other rules apply.

EFFECTIVE DATE

The credit applies any home whose construction is substantially completed after December 31, 2001 and which are purchased during the period beginning on January 1, 2002 and ending on December 31, 2006.

H. ALLOWANCE OF DEDUCTION FOR ENERGY-EFFICIENT COMMERCIAL BUILDING PROPERTY

(Sec. 110 of the Bill and New Sec. 179B of the Code)

PRESENT LAW

No special deduction is currently provided for expenses incurred for energy-efficient commercial building property.

REASONS FOR CHANGE

The Committee recognizes that commercial buildings consume a significant amount of energy resources and that reductions in commercial energy use have the potential to significantly reduce national energy consumption. Accordingly, the Committee believes that a special deduction for commercial building property (lighting, heating, cooling, ventilation, and hot water supply systems) that meets a high energy-efficiency standard will encourage construction of buildings that are significantly more energy efficient than the norm. The Committee further believes that the special deduction will encourage innovation to reduce the costs of meeting the energy-efficiency standard.

EXPLANATION OF PROVISION

The provision provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures are

amounts paid or incurred for energy-efficient commercial building property installed in connection with the new construction or reconstruction of property: (1) which would otherwise be depreciable property; (2) which is located in the United States, and (3) the construction or erection of which is completed by the taxpayer. The deduction is limited to an amount equal to the product of \$2.25 and the square footage of the property for which such expenditures were made. The deduction is allowed in the year in which the property is placed in service. The taxpayer's basis in the property is reduced by the amount of the deduction.

Energy-efficient commercial building property means any property that reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a reference building which meets the requirements of a Standard 90.1-1999 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America.

For public property, such as schools, the Secretary will issue regulations to allow the deduction to be allocated to the person primarily responsible for designing the property in lieu of the public entity owner. Other rules apply.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001 and for property placed in service before January 1, 2007.

I. ALLOWANCE OF DEDUCTION FOR QUALIFIED ENERGY MANAGEMENT DEVICES AND RETROFITTED QUALIFIED METERS

(Sec. 111 of the Bill and New Sec. 179C of the Code)

PRESENT LAW

No special deduction is currently provided for expenses incurred for qualified energy management devices.

REASONS FOR CHANGE

The Committee believes that consumers could better manage their electricity and natural gas use if they had better information concerning its price. In the case of electricity, if time-of-day pricing is used, energy management devices that provide information to consumers regarding their peak electrical use and the time-of-day price variation could encourage consumers to defer certain electrical use, such as use of a clothes washer and dryer, to periods of the day when electricity prices are lower. In addition to reducing consumers' electricity bill, spreading the demand for electricity throughout the day will reduce the need for utility investments in generation capacity to satisfy peak demand periods.

The Committee believes that a deduction for qualified energy management devices, in conjunction with a 3-year recovery period for qualified energy management devices provided in the bill, will provide sufficient incentive to encourage their adoption as a means for consumers to control electricity and natural gas usage.

EXPLANATION OF PROVISION

The provision provides a deduction of up to \$30 for each qualified new or retrofitted energy management device placed in service by any taxpayer who is a supplier of electric energy or natural gas or is a provider of electric energy or natural gas services. A qualified energy management device is any tangible property eligible for accelerated depreciation under section 168 that enables consumers to manage their purchase or use of electricity in response to energy price and usage signals and that permits reading of energy price and usage signals on at least a daily basis. Property used predominantly outside of the United States is not eligible for the deduction.

A taxpayer is required to reduce the adjusted basis of such property by the amount of the deduction. The deduction is not allowed for property used outside of the United States. Other rules apply.

EFFECTIVE DATE

The provision is effective for any qualified energy management device placed in service after the date of enactment of the Act.

J. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES

(Sec. 112 of the Bill and Sec. 168 of the Code)

PRESENT LAW

No special recovery period is currently provided for depreciation of qualified energy management devices.

REASONS FOR CHANGE

The Committee believes that consumers could better manage their electricity and natural gas costs if they had better information concerning the price of electricity and natural gas use. In the case of electricity, if time-of-day pricing is used, energy management devices that provide information to consumers regarding their peak electrical use and the time-of-day price variation could encourage consumers to defer certain electrical use, such as use of a clothes washer and dryer, to periods of the day when electricity prices are lower. In addition to reducing consumers' electricity bill, spreading the demand for electricity throughout the day will reduce the need for utility investments in generation capacity to satisfy peak demand periods.

The Committee believes that a 3-year recovery period for qualified energy management devices, in conjunction with the special deduction for qualified energy management devices provided in the bill, will provide sufficient incentive to encourage their adoption as a means for consumers to control electricity and natural gas usage.

EXPLANATION OF PROVISION

The provision provides a 3-year recovery period for qualified new or retrofitted energy management devices placed in service by any taxpayer who is a supplier of electric energy or natural gas or is a provider of electric energy or natural gas services. A qualified energy management device is any tangible property eligible for accelerated depreciation under code section 168 that enables consumers

to manage their purchase or use of electricity in response to energy price and usage signals and that permits reading of energy price and usage signals on at least a daily basis. Property used predominantly outside of the United States is not eligible for the 3-year recovery period.

EFFECTIVE DATE

The provision is effective for any qualified energy management device placed in service after the date of enactment of the Act.

K. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY

(SEC. 113 OF THE BILL AND SEC. 48 OF THE CODE)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above \$25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for combined heat and power ("CHP") property.

REASONS FOR CHANGE

The Committee believes that investments in combined heat and power systems represent a promising means to achieve greater national energy efficiency by encouraging the dual use of the energy from the burning of fossil fuels. Furthermore, the on-site generation of electricity provided by CHP systems will reduce reliance on the United States' electricity grid. The Committee believes that providing a tax credit for investment in combined heat and power property will encourage investments in such systems.

EXPLANATION OF PROVISION

The provision provides a 10-percent credit for the purchase of combined heat and power property.

CHP property means property: (1) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) which produces at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent in the form of electrical or mechanical power (or a combination thereof); and (4) whose energy efficiency percentage exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical capacities).

CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

If a taxpayer is allowed a credit for CHP property, and the property would ordinarily have a depreciation class life of 15 years or less, the depreciation period for the property is treated as having a 22-year class life. The present-law carry back rules of the general business credit generally apply except that no credits attributable to combined heat and power property may be carried back before the effective date of this provision.

EFFECTIVE DATE

The credit applies to property placed in service after December 31, 2001 and before January 1, 2007.

L. ALLOW NONBUSINESS ENERGY CREDITS AGAINST THE ALTERNATIVE MINIMUM TAX

(Sec. 114 of the Bill and Sec. 26 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, for taxable years beginning after December 31, 2001, nonrefundable personal credits may not exceed the excess of the regular tax liability over the tentative minimum tax.

REASONS FOR CHANGE

The Committee believes that the nonbusiness energy credits should be utilized by offsetting both the regular tax and the alternative minimum tax.

EXPLANATION OF PROVISION

The provision allows the personal energy credits added by the bill to offset both the regular tax and the alternative minimum tax. These credits include the credit for residential solar energy property (sec. 25C), the credit for certain energy-efficient property (sec.

25D), and the credit for energy efficient improvements to existing homes (sec. 25E).

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2001.

M. REPEAL CERTAIN EXCISE TAXES ON RAIL DIESEL FUEL AND INLAND WATERWAY BARGE FUELS

(Sec. 115 of the Bill and Secs. 4041 and 4042 of the Code)

PRESENT LAW

Under present law, diesel fuel used in trains is subject to a 4.4-cents-per gallon excise tax. Revenues from 4.3 cents per gallon of this excise tax are retained in the General Fund of the Treasury. The remaining 0.1 cent per gallon is deposited in the Leaking Underground Storage Tank (“LUST”) Trust Fund.

Similarly, fuels used in barges operating on the designated inland waterways system are subject to a 4.3-cents-per-gallon General Fund excise tax. This tax is in addition to the 20.1-cents-per-gallon tax rates that are imposed on fuels used in these barges to fund the Inland Waterways Trust Fund and the Leaking Underground Storage Tank Trust Fund.

In both cases, the 4.3-cents-per-gallon excise tax rates are permanent. The LUST tax is scheduled to expire after March 31, 2005.

REASONS FOR CHANGE

The Committee notes that in 1993, the Congress enacted the present-law 4.3-cents-per-gallon excise tax on motor fuels as a deficit reduction measure, with the receipts payable to the General Fund. Since that time, the Congress has diverted the 4.3-cents-per-gallon excise tax for most uses to specified trust funds that provide benefits for those motor fuel users who ultimately bear the burden of these taxes. As a result, the Committee finds that generally only rail and barge operators remain as motor fuel users subject to the 4.3-cents-per-gallon excise tax who receive no benefits from a dedicated trust fund as a result of their tax burden. The Committee observes that rail and barge operators compete with other transportation service providers who benefit from expenditures paid from dedicated trust funds. The Committee concludes that, in light of the fact the Federal government is not running a deficit, it is inequitable and distortive of transportation decisions to continue to impose the 4.3-cents-per-gallon excise tax on diesel fuel used in trains and barges.

DESCRIPTION OF PROVISION

Under the provision, the 4.3-cents-per-gallon General Fund excise tax on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system is repealed over a prescribed phase-out period. The 4.3-cents-per-gallon tax would be reduced by 1 cent per gallon beginning on October 1, 2001 and through December 31, 2004. The reduction would be 2 cents per gallon in calendar years 2005 and 2006; 3 cents per gallon in cal-

endar years 2007 and 2008, and 4 cents per gallon in calendar year 2009. The tax would be fully repealed effective on January 1, 2010.

EFFECTIVE DATE

The provision is effective on October 1, 2001.

N. BTU-BASED RATE FOR DIESEL/WATER EMULSION FUEL

(Sec. 116 of the Bill and 4081 and 6427 of the Code)

PRESENT LAW

A 24.3 cents per gallon excise tax is imposed on diesel fuel to finance the Highway Trust Fund. Gasoline and most special motor fuels are subject to tax at 18.3 cents per gallon for the Trust Fund. The statutory rate for certain special motor fuels is determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane): 13.6 cents per gallon

Liquefied natural gas: 11.9 cents per gallon

Methanol derived from petroleum or natural gas: 9.15 cents per gallon

Compressed natural gas: 48.54 cents per MCF

No special tax rate is provided for diesel fuel blended in a water emulsion fuel.

REASONS FOR CHANGE

The Highway Trust Fund taxes are structured to reflect use of the highway system. Because diesel/water emulsion fuels have fewer Btu's, larger quantities must be purchased to travel the same number of miles as regular diesel fuel. A Btu-based tax rate better correlates highway use and tax paid. The committee further understands that the diesel fuel/water emulsion fuel may reduce air pollutants relative to regular diesel fuel and believes that the Btu-based rate, by removing a tax disadvantage to use of the fuel, will be beneficial to the environment.

EXPLANATION OF PROVISION

A special tax rate of 19.7 cents per gallon is provided for diesel fuel blended with water into a diesel/water emulsion fuel to reflect the reduced Btu content per gallon resulting from the water. Emulsion fuels eligible for the special rate must consist of not more than 86 percent diesel fuel (and other minor chemical additives to enhance combustion) and at least 14 percent water.

EFFECTIVE DATE

The provision applies to fuels removed after September 30, 2001.

O. INVESTMENT AND PRODUCTION CREDITS FOR CLEAN COAL TECHNOLOGY

(Sec. 118 of the Bill and New Secs. 48A and 45K of the Code)

PRESENT LAW

Present law does not provide an investment credit for electricity generating facilities that use coal as a fuel. Nor does present law

provide a production credit for electricity generated at facilities that use coal as a fuel. However, a nonrefundable, 10-percent investment tax credit (“business energy credit”) is allowed for the cost of new equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) that is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage (sec. 48). Also, an income tax credit is allowed for the production of electricity from either qualified wind energy, qualified “closed-loop” biomass, or qualified poultry waste facilities (sec. 45). The credit allowed equals 1.5 cents per kilowatt-hour of electricity sold. The 1.5 cent figure is indexed for inflation and equals 1.7 cents for 2001. The credit is allowable for production during the 10-year period after a facility is originally placed in service. The business energy tax credits and the production tax credit are components of the general business credit (sec. 38(b)(1)).

REASONS FOR CHANGE

The committee recognizes that coal is the nation’s most abundant fuel source. The committee believes that to effectively tap this resource new technologies need to be developed. Towards that end, the committee believes it is appropriate to provide investment and production credits to a limited number of experimental production-scale electricity generating facilities to reduce the cost of building and operating facilities that represent the frontier of thermal efficiency and pollution control.

EXPLANATION OF PROVISION

The provision provides a 10-percent investment tax credit for qualified investments in advanced clean coal technology facilities. Qualifying advanced clean coal electricity production facilities must utilize advanced pulverized coal or atmospheric fluidized bed combustion technology and must meet certain capacity, thermal efficiency, and emissions standards. In addition, to be a qualified investment in advanced clean coal technology, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to investments only to the point that 7,500 megawatts of electricity production capacity qualifies for the credit. The taxpayer’s basis in the property is reduced by the amount of any credit claimed.

The provision also provides a production credit for electricity produced from a qualified advanced clean coal technology electricity generation unit. The production credit is claimed on the sum of each kilowatt-hour of electricity produced and the heat value of other fuels or chemicals produced by the taxpayer at the facility. The value of the credit (indexed for inflation) varies depending upon the year the facility was placed in service and the rated thermal efficiency of the facility. The production credit may be claimed for the 10-year period commencing with the date the qualifying facility is placed in service, with the credit allowable in the second five years less (before making any inflation adjustment) than that allowable for the first five years.

EFFECTIVE DATE

The provisions relating to investments and electricity production related to advanced clean coal technology are effective for periods after December 31, 2001.

TITLE II—RELIABILITY

A. NATURAL GAS GATHERING LINES TREATED AS SEVEN-YEAR PROPERTY

(Sec. 201 of the Bill and Sec. 168 and 56 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the “class life of the property.” The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.² Revenue Procedure 87–56 includes two asset classes that could describe natural gas gathering lines owned by nonproducers of natural gas. Asset class 46.0, describing pipeline transportation, provides a class life of 22 years and a recovery period of 15 years. Asset class 13.2, describing assets used in the exploration for and production of petroleum and natural gas deposits, provides a class life of 14 years and a depreciation recovery period of seven years. The uncertainty regarding the appropriate recovery period of natural gas gathering lines has resulted in litigation between taxpayers and the IRS. Recently, the 10th Circuit Court of Appeals held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 13.2 (i.e., 7-year recovery period).³

REASONS FOR CHANGE

The Committee believes the appropriate recovery period for natural gas gathering lines is seven years.

EXPLANATION OF PROVISION

The provision establishes a statutory 7-year recovery period and a class life of 10 years for natural gas gathering lines. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer’s alternative minimum taxable income with respect to such property. A natural gas gathering line is defined to include any pipe, equipment, and appurtenance that is (1) determined to be a gathering line by the Federal Energy Regulatory Commission, or (2) used to deliver natural gas from the wellhead or a common point to the point at which such gas first reaches (a) a gas processing plant, (b) an interconnection with an interstate transmission line, (c) an interconnection with an intrastate transmission line, or (d) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

² 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

³ *Duke Energy v. Commissioner*, 172 F.3d 1255 (10th Cir. 1999), rev’g 109 T.C. 416 (1997). See also *True v. United States*, 97–2 U.S. Tax Cas. (CCH) par. 50,946 (D. Wyo. 1997).

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment. No inference is intended as to the proper treatment of natural gas gathering lines placed in service before the date of enactment.

B. NATURAL GAS DISTRIBUTION LINES TREATED AS TEN-YEAR
PROPERTY

(Sec. 202 of the Bill and Sec. 168 and 56 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the “class life of the property.” The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.⁴ Natural gas distribution pipelines are assigned a 20-year recovery period and a class life of 35 years.

REASONS FOR CHANGE

The Committee recognizes the importance of modernizing our aging energy infrastructure to meet the demands of the twenty-first century, and the Committee also recognizes that both short-term and long-term solutions are required to meet this challenge. The Committee understands that investment in our energy infrastructure has not kept pace with the nation’s needs. In light of this, the Committee believes it is appropriate to reduce the recovery period for investment in certain energy infrastructure property to encourage investment in such property.

EXPLANATION OF PROVISION

The provision establishes a statutory 10-year recovery period and a class life of 20 years for natural gas distribution lines. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer’s alternative minimum taxable income with respect to such property.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment.

C. PETROLEUM REFINING PROPERTY TREATED AS SEVEN-YEAR
PROPERTY

(Sec. 203 of the Bill and Sec. 168 and 56 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the “class life of the property.” The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.⁵

⁴ 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

⁵ 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

Asset class 13.3, describing petroleum refining, provides a class life of 16 years and a recovery period of 10 years.

REASONS FOR CHANGE

The Committee recognizes the importance of modernizing our aging energy infrastructure to meet the demands of the twenty-first century, and the Committee also recognizes that both short-term and long-term solutions are required to meet this challenge. The Committee understands that investment in our energy infrastructure has not kept pace with the nation's needs. The National Energy Policy Development Group indicates that petroleum refineries are now operating at nearly 100 percent capacity and that there has been little investment in such assets in the past ten years. In light of this, the Committee believes it is appropriate to reduce the recovery period for investment in petroleum refining assets to spur investment in such property to ensure an adequate supply of petroleum products for the nation.

EXPLANATION OF PROVISION

The provision establishes a statutory 7-year recovery period and a class life of 10 years for assets used in petroleum refining. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.

Petroleum refining assets are defined to include assets used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components.

EFFECTIVE DATE

The provision is effective for property placed in service on or after the date of enactment.

D. EXPENSING OF CAPITAL COSTS INCURRED AND CREDIT FOR PRODUCTION IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS

(Sec. 204 of the Bill and Sec. 179 and New Sec. 45I of the Code)

PRESENT LAW

Taxpayers generally may recover the costs of investments in refinery property through annual depreciation deductions. Present law does not provide a credit for the production of low-sulfur diesel fuel.

REASONS FOR CHANGE

The committee believes it is important for all refiners to meet applicable pollution control standards. However, the committee is concerned that the cost of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency may force some small refiners out of business. To maintain this refining capacity and to foster compliance with pollution control standards the committee believes it is appropriate to modify cost recovery provisions for small refiners to reduce their capital costs

of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency.

EXPLANATION OF PROVISION

The bill permits small business refiners to claim an immediate deduction (i.e., expensing) for up to 75 percent of the costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency ("EPA"). In addition, the provision provides that a small business refiner may claim credit equal to five cents per gallon for each gallon of low sulfur diesel fuel produced during the taxable year. The total production credit claimed by the taxpayer is limited to 25 percent of the capital costs incurred to come into compliance with the EPA diesel fuel requirements. The taxpayer's basis in such property is reduced by the amount of production credit claimed. Recapture of the credits occurs for failure to comply with EPA regulations, cessation of operation, or certain changes in ownership.

For these purposes a small business refiner is a taxpayer who is within the business of refining petroleum products employs not more than 1,500 employees directly in refining and has less than 155,000 barrels per day (average) of total refinery capacity.

EFFECTIVE DATE

The provision is effective for expenses paid or incurred after the date of enactment.

E. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION

(Sec. 206 of the Bill and Sec. 613A of the Code)

PRESENT LAW

Present law classifies oil and gas producers as independent producers or integrated companies. The Code provides numerous special tax rules for operations by independent producers. One such rule allows independent producers to claim percentage depletion deductions rather than deducting the costs of their asset, a producing well, based on actual production from the well (i.e., cost depletion).

A producer is an independent producer only if its refining and retail operations are relatively small. For example, an independent producer may not have refining operations the runs from which exceed 50,000 barrels on any day in the taxable year during which independent producer status is claimed.

REASONS FOR CHANGE

The Committee believes that the goal of present law, to identify producers without significant refining capacity, can be achieved while permitting more flexibility to refinery operations.

EXPLANATION OF PROVISION

The provision increases the current 50,000-barrel-per-day limitation to 75,000. In addition, the provision changes the refinery limi-

tation on claiming independent producer status from a limit based on actual daily production to a limit based on average daily production for the taxable year. Accordingly, the average daily refinery run for the taxable year may not exceed 75,000 barrels. For this purpose, the taxpayer calculates average daily production by dividing total production for the taxable year by the total number of days in the taxable year.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

F. MODIFICATIONS TO RULES GOVERNING ISSUANCE OF TAX-EXEMPT BONDS FOR PUBLIC POWER FACILITIES

(Sec. 207 of the Bill and New Sec. 141A of the Code)

In general

Interest on debt⁶ incurred by States or local governments is excluded from income if the proceeds of the borrowing are used to carry out governmental functions of those entities or the debt is repaid with governmental funds (sec. 103).⁷ Interest on bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such a private person (“private activity bonds”) is taxable, unless the purpose of the borrowing is approved specifically in the Code or in another provision of a revenue Act. The term “private person” generally includes the Federal Government and all other individuals and entities other than States or local governments.⁸

The general structure of the rules for determining whether a tax-exempt bond is a governmental or a private activity bond was established in 1968. The Tax Reform Act of 1986 (the “1986 Act”) further restricted the amount of private use that may be financed before a State or local government bond is classified as a private activity bond, and enacted extensive additional restrictions on tax-exempt financing generally.

The provision of electric service (generation, transmission, distribution, and retailing) is an activity eligible for financing with governmental tax-exempt bonds when the financed facilities are used by or paid for by a State or local governmental entity (e.g.,

⁶ Hereinafter referred to as “State or local government bonds,” even though not all tax-exempt debt results in the issuance of a formal bond (e.g., installment sales agreements are treated as bonds).

⁷ Interest on this debt is included in calculating the “adjusted current earnings” preference of the corporate alternative minimum tax.

⁸ Interest on Federal debt is taxable. However, unlike most State or local government debt, Federal debt benefits from the Federal Government’s guarantee of repayment. The Code includes limited exceptions allowing the combination of these benefits, generally for programs that were in existence before enactment of the Tax Reform Act of 1984.

One such exception allows certain tax-exempt financing of State or local government facilities that transmit and distribute electric power supplied by the Bonneville Power Administration (the “BPA”), a Federal instrumentality. In addition, section 1316(d) of the Tax Reform Act of 1986 codified a prior-law Treasury Department regulation that treated the BPA as a State or local government unit rather than as a Federal entity. These exceptions are unique to the BPA; other Federal power agencies are treated as Federal entities and are not permitted to benefit from tax-exempt financing or to guarantee such financing.

“public power”).⁹ As with other governmental activities, public power entities also are eligible for limited tax-exempt financing of working capital costs (e.g., salaries of employees and similar expenses). Except as described below, IOUs and co-ops generally are not eligible for tax-exempt financing of their facilities. With the exception of certain charitable organizations that are described in Code section 501(c)(3), private businesses are not eligible to finance working capital costs with tax-exempt bonds (except with proceeds of a permitted five-percent “bad money” portion of a bond issue which may be used for any type of expenditure).

Classification of bonds as private activity bonds

Present law provides two tests for determining whether a State or local government bond is, in substance, a private activity bond (sec. 141(b) and (c)).

Private business test.—Private business use and private payments result in State or local government bonds being private activity bonds if both parts of a two-part private business test are violated—

(1) More than 10 percent of the bond proceeds is to be used (directly or indirectly) by a private business (the “private business use test”); and

(2) More than 10 percent of the debt service on the bonds directly or indirectly is secured by an interest in property to be used for a private business use or is to be derived from payments in respect of such property (the “private payment test”).

The 10-percent private business use and payment threshold is reduced to five percent for private business uses that are unrelated to a governmental purpose also being financed with proceeds of the bond issue. For example, a privately operated cafeteria in a government office building financed as part of the building’s construction could represent a related private business use. On the other hand, a separate, private manufacturing facility financed with proceeds of the same bond issue would constitute an unrelated private business use of bond proceeds. Additionally, as described more fully below, since enactment of the 1986 Act, the 10-percent private business use and private payment thresholds are phased-down for larger bond issues for the financing of certain “output” facilities. The term output facility includes electric generation, transmission, and distribution facilities.

Private business use generally includes any use by a business entity (including the Federal Government), which occurs pursuant to terms not generally available to the general public. For example, if bond-financed property is leased to a private business (other than pursuant to certain short-term leases for which safe harbors are provided under Treasury Department regulations), bond proceeds used to finance the property are treated as used in a private business use, and rental payments are treated as securing the payment of the bonds. Similarly, in the case of public power entities, if output of an electric generating plant or transmission or distribution facilities is provided to a private business on terms not generally available to other customers of the entity, an allocable portion of

⁹Section 115 also exempts the income that States and local governments derive from the operation of public power systems as governmental activities.

bonds financing the facilities is treated as used in a private business use and as secured by the payments from the private business.¹⁰

Private business use also can arise when a governmental entity contracts for the operation of a governmental facility by a private business under a management contract that does not satisfy Treasury Department regulatory safe harbors regarding the types of payments made to the private operator and the length of the contract.¹¹ These rules require public power entities to restrict the period of contracts with private businesses as well as the aggregate amount of electric service provided to private businesses on terms that are not generally available to customers of the entity, if interest on their bonds is to remain tax-exempt.

Private loan test.—The second standard for determining whether a State or local government bond is a private activity bond is whether an amount exceeding the lesser of (1) five percent of the bond proceeds or (2) \$5 million is used directly or indirectly to finance loans to private persons. Private loans include both business and other (e.g., personal) uses and payments by private persons; however, in the case of business uses and payments, all private loans also constitute private business uses and payments subject to the private business test.

Present law provides that the substance, rather than the form, of a transaction governs in determining whether a transaction gives rise to a private loan. In general, any transaction, which transfers tax ownership of property to a private person, is treated as a loan. In the context of electric facilities, longer-term contracts for the sale of electricity may violate the private loan test, because these contracts have the substantive characteristics of a loan.

Special legislative rules for tax-exempt financing of governmental “output” facilities

In addition to the general private business use and payment tests, the Code includes three specific provisions governing the issuance of governmental tax-exempt bonds to finance electric service facilities.

\$15 million limit on private business use.—As stated above, the 1986 Act provided an additional restriction on private business use of State or local government bonds whose proceeds are to be used to finance “output” facilities.¹² Output facilities include, inter alia, facilities for electric and gas generation, transmission, and distribution. A bond is treated as issued to finance an output facility (and

¹⁰See, Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, (JCS-10-87), May 4, 1987, stating as follows:

The determination of who uses bond proceeds or bond-financed property generally is made by reference to the ultimate user of the proceeds or property. . . . [B]ond proceeds used to satisfy contractual obligations undertaken in connection with general governmental operations, such as payment of government salaries, or to pay legal judgments against a governmental unit, are not treated as used in the business of the payee. This is to be contrasted with the indirect nongovernmental private use of bond proceeds that occurs when a government contracts with a nongovernmental person to supply that person's trade or business with a service (e.g., electric energy) on a basis different from that on which the service is provided to the public generally or to finance property used in that person's business (e.g., a manufacturing plant). In both of these instances a nongovernmental person is considered to use the bond proceeds other than as a member of the general public. (p. 1160)

¹¹See Treas. Reg. sec. 1.141-3(b)(4) and Revenue Procedure 97-13, 1997-1 C.B. 632.

¹²Sec. 141(b)(4).

subject to this restriction) if five percent or more of the proceeds is to be used with respect to any output facility. Under this restriction, the 10-percent private business use and private payment tests in substance are phased down for facilities that receive more than \$15 million in tax-exempt bond financing. Significantly, unlike most tax-exempt bond restrictions, which are determined on a bond-issue-by-bond-issue basis, this restriction is measured by reference to all outstanding tax-exempt financing from which a facility benefits.

Special rules disregarding certain private business use under the private activity bond tests.—The legislative history accompanying the 1986 Act further clarified that certain sales of electric power by public power entities to private businesses generally are disregarded in applying the private business and private loan tests. For example, the presence of a nongovernmental person acting solely as a conduit for exchange of electric output among governmentally owned and operated public power entities are to be disregarded. In addition, exchange agreements that provide for “swapping” of electricity between governmentally owned and operated entities and IOUs do not give rise to private business use when (1) the “swapped” amounts are approximately equal over a period of one year or less, (2) the electricity is swapped pursuant to an arrangement which does not involve output-type contracts, and (3) the purpose of the arrangements is to enable the parties to satisfy differing peak load demands or to accommodate temporary outages.¹³ Finally, the legislative history of the 1986 Act provides that “spot sales” of excess power capacity for temporary periods not exceeding 30 days do not violate the private business tests.

Bonds for acquisition of existing output property per se private activity.—In general, any bond with respect to which five percent or more (\$5 million if less) of the proceeds is to be used, directly or indirectly, by a governmental entity to acquire existing output property is per se a private activity bond.¹⁴ As such, interest on the bond is taxable, unless the use of the acquired facility satisfies the provisions applicable to tax-exempt private activity bonds for the local furnishing of electricity, including receipt of an allocation of the applicable State’s annual private activity bond volume authority (described below). The two-county (or a city and a contiguous county) service area requirement that applies to facilities for the local furnishing of electricity does not apply in this circumstance.

There are two exceptions to the rule regarding the acquisition of existing output property. First, the rule does not apply to bonds for the acquisition of existing facilities that will provide service in a “qualified service area” of the issuer. A qualified service area is defined as an area throughout which the acquiring entity has provided electric service for at least the 10-year period preceding the date of the acquisition. Second, the rule does not apply to bonds issued to acquire existing output property to be used in a “qualified annexed area” of a public power entity. The term qualified annexed area includes only areas (1) that are contiguous to existing service

¹³ See, Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, (JCS-10-87), May 4, 1987 at 1164.

¹⁴ Sec. 141(d). A permanent exception allows the Long Island Power Authority to issue governmental tax-exempt bonds for the acquisition of the Long Island Lighting Company (“LILCO”) and conversion of that electric utility from a private investor-owned utility to a public power entity. Pub. L. No. 100-203, sec. 10631(c)(3) (1987).

areas, (2) that are annexed for general governmental purposes, and (3) the size of which does not exceed 10 percent of the public power entity's service area before the annexation occurs.

Temporary Treasury regulations

On January 18, 2001, the Treasury Department issued temporary and proposed regulations to provide guidance to issuers of governmental bonds for output facilities ("the regulations"). The regulations provide special rules for determining whether arrangements for the purchase of output from an output facility cause an issue of bonds to meet the private business tests. The regulations replace temporary and proposed regulations issued in January of 1998. The regulations generally apply to bonds sold on or after January 19, 2001, and are scheduled for a public hearing before the IRS on July 24, 2001. The regulations generally allow public power entities to participate in certain electric industry restructuring arrangements without endangering tax-exemption for interest on their bonds.

General rule

The regulations provide that purchase by a private person of available output of an output facility financed with the proceeds of an issue is taken into account under the private business tests if the purchase has the effect of (1) transferring substantial benefits of owning the facility and (2) transferring substantial burdens of paying the debt service on bonds used to finance the facility (the benefits and burdens test).¹⁵ An arrangement transfers substantial benefits if it provides the purchaser with rights to bond-financed property that are preferential to the rights of the general public. An arrangement transfers substantial burdens of paying debt service to the extent the issuer reasonably expects that it is substantially certain that payments will be made under the terms of the contract (disregarding default, insolvency, or other similar circumstances).

Requirements contracts.—The regulations provide that requirements contracts give rise to private use provided the benefits and burden tests are met.¹⁶ Significant factors that tend to establish that a wholesale requirements contract results in private business use include, but are not limited to: (1) the purchaser's customer base has significant indicators of stability, (2) the contract covers historical requirements of the purchaser, and (3) the purchaser agrees not to construct or acquire other power resources to meet the requirements covered by the contract.

Payments pursuant to pledged contract.—Payments made or to be made under the terms of an output contract that is pledged as security for an issue are taken into account under the private business tests even if the issuer reasonably expects that it is not substantially certain that payments will be made under the contract (disregarding default, insolvency, or other similar circumstances).

¹⁵Temp. Treas. Reg. sec. 1.141-7T(c)(1) and (c)(2).

¹⁶Temp. Treas. Reg. sec. 1.141-7T(c)(4).

Measuring available output

Generation facilities.—Under the regulations, the private business use of a generating facility is generally measured based on the amount of “output purchased” by the private user divided by the available output of the facility. Available output is generally defined as the annual nameplate capacity of the generating facility multiplied by the number of years in the underlying bond’s measurement period.¹⁷ Generally, the regulations provide that nameplate capacity is not reduced for reserves, maintenance or unutilized capacity.¹⁸

Transmission facilities.—For transmission facilities, the regulations provide that the available output of transmission facilities may be determined in a manner consistent with reporting rules and requirements for transmission networks promulgated by the Federal Energy Regulatory Commission.¹⁹

Certain contracts not taken into account under the private business tests

Small purchases of output.—The regulations provide that an output contract is not taken into account under the private business tests if the average annual payments under a contract that are substantially certain to be made by a private user do not exceed .05 percent of the average annual debt service on all outstanding tax-exempt bonds issued to finance the facility determined as of the date of the contract.²⁰

Short term contracts.—Under the regulations, an output contract with a private user is not taken into account under the private business tests if: (1) the term of the contract (including renewal options) is not longer than one year; (2) the contract is an arm’s length agreement that provides for compensation at fair market value, or is based on generally applicable and uniformly applied rates; and (3) the output facility was not financed for a principal purpose of providing that facility for use by a private person.²¹

Excess generating capacity resulting from participation in open access.—The regulations contain an exception to the private use test for the sale of excess generating capacity due to participation in open access.²² Under the regulations, output sales attributable to excess generating capacity from participation in open access are not treated as private use if the following requirements are satisfied: (1) the term of the contract is not longer than three years (including renewal options); (2) the issuer does not make expenditures to increase the generating capacity of its system with tax-exempt bonds by more than three percent during the term of the contract; (3) the issuer offers open access transmission tariffs under rules promulgated by the Federal Energy Regulatory Commission under sections 205 and 206 of the Federal Power Act (or comparable provisions of State law); (4) all of the output sold under the contract is attributable to excess capacity resulting from open access transmission tariffs; and (5) all payments received by the issuer (less op-

¹⁷Temp. Treas. Reg. sec. 1.141-7T(b)(1) and (b)(1)(i).

¹⁸*Id.*

¹⁹Temp. Treas. Reg. sec. 1.141-7T(f)(4).

²⁰Temp. Treas. Reg. sec. 1.141-7T(f)(1).

²¹Temp. Treas. Reg. sec. 1.141-7T(f)(3).

²²Temp. Treas. Reg. sec. 1.141-7T(f)(4).

erating expenses) are promptly applied to redeem tax-exempt bonds that financed the facility.

Special exceptions for transmission facilities

The regulations include two exceptions for transmission and distribution facilities under which mandated wheeling, and actions taken to implement nondiscriminatory open access, will not be treated as deliberate actions resulting in private business use. The first exception is for contracts entered into in response to (or in anticipation of) an order under sections 211 or 212 of the Federal Power Act (or comparable State laws). The terms of the contract must be bona fide and arm's length and the consideration paid must be consistent with the provisions of section 212(a) of the Federal Power Act. The second exception is for other actions taken by public power entities to implement the offering of non-discriminatory, open-access tariffs for the use of transmission facilities financed by an issue in a manner consistent with rules promulgated by the Federal Energy Regulatory Commission under sections 205 and 206 of the Federal Power Act (or comparable provisions of State law). The exceptions, however, do not apply to the sale, exchange, or other disposition of facilities to a private person.²³

Issuance of tax-exempt bonds for private activities

As stated above, interest on State or local government bonds to finance activities of private persons (both business and personal activities) is taxable unless a specific exception is contained in the Code (or in non-Code provision of a revenue Act). The Code includes exceptions permitting States or local governments to act as conduits providing tax-exempt financing for certain private activities. In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. The Code further imposes several additional restrictions on tax-exempt private activity bonds that do not apply to bonds for governmental activities.

Eligible activities

In general.—States or local governments may issue tax-exempt exempt-facility bonds to finance facilities for certain private businesses.²⁴ Business uses eligible for this financing generally include transportation (airports, ports, local mass commuting, and high speed intercity rail facilities); privately owned and/or privately operated public works facilities (sewage, solid waste disposal, local district heating or cooling, and hazardous waste disposal facilities); privately-owned and/or operated low-income rental housing; and, certain private facilities for the local furnishing of electricity or gas. A further provision allows tax-exempt financing for “environmental enhancements of hydro-electric generating facilities.” This provision was enacted to permit tax-exempt financing of certain renovations to the dams and accompanying hydroelectric electric generating fa-

²³ Temp. Treas. Reg. sec. 1.141-7T(f)(5)(ii).

²⁴ A separate non-Code exception allows the State of Iowa to issue tax-exempt private activity bonds to finance an industrial new jobs program.

cilities along the Columbia River that are a part of the Bonneville Power Administration system.²⁵

Tax-exempt financing is authorized for capital expenditures for certain manufacturing facilities and land and equipment for first-time farmers (“qualified small-issue bonds”), certain local redevelopment activities (“qualified redevelopment bonds”), and eligible empowerment zone and enterprise community businesses. Further, certain non-business private purposes may be financed with proceeds of these bonds: certain student loans, mortgage loans for first-time home buyers satisfying moderate income and home purchase price requirements, and mortgage loans generally for certain pre-1977 veterans who purchase homes in any of the five States that historically authorized issuance of these bonds.²⁶ Finally, both capital expenditures and limited working capital expenditures of charitable organizations described in section 501(c)(3) of the Code may be financed with tax-exempt bonds (“qualified 501(c)(3) bonds”).

Private activity bonds for the local furnishing of electricity.—Tax-exempt private activity bonds may be issued by States or local governments acting as conduits to finance generation, transmission, and distribution facilities for private businesses engaged in the local furnishing of electricity (“local furnishers”). A business is treated as engaged in local furnishing of electricity if the service territory in which the electricity is provided does not exceed (1) two contiguous counties, or (2) a city and a contiguous county. Historically, local furnishers eligible for this tax-exempt financing have included both IOUs and independent power ventures. These bonds may be issued for the benefit of only those persons that were engaged in local furnishing of electricity in the service territory in which the new facilities will be used as of January 1, 1997, or in qualified expansions of those service territories. A “qualified expansion” is limited to service territory that is a part of a county in which the local furnisher was providing electric service on that date. For example, if a local furnisher was providing electric service to one county and a portion of a contiguous county on January 1, 1997, bonds may be issued for the continued provision of service both within that area and also for service to be provided in the remaining portion of the contiguous county in the future. In addition to persons actually engaged in local furnishing activities on January 1, 1997, the Code allows certain successors in interest to persons that qualified as local furnishers on that date to “step into the shoes” of the predecessor local furnishers provided that the service territories served otherwise satisfy the requirements for local furnishing.

Notwithstanding the general limits on service territories of local furnishers, the Code includes special rules allowing these electric service providers to transmit (“wheel”) electricity through their sys-

²⁵ Two additional non-Code provisions allow tax-exempt financing for certain electric generating facilities located in the State of Alaska. The first of these treats the Bradley Lake hydro-electric generating plant as a facility for the local furnishing of electricity. The second authorized issue of tax-exempt private activity bonds to finance the sale by the Federal Government of the Snettisham electric generating facility, also in Alaska, without satisfaction of the general rehabilitation requirement applicable to private activity bonds, because after the sale the facility’s output is sold to an IOU in Juneau, Alaska.

²⁶ The five States are Alaska, California, Oregon, Texas, and Wisconsin. A non-Code exception allows the State of Texas to issue tax-exempt private activity bonds to finance limited amounts of land for veterans (in addition to any veterans mortgage bonds that Texas may issue).

tems, if ordered by the Federal Energy Regulatory Commission to do so under sections 211 or 213 of the Federal Power Act, provided that the size of the transmission lines or other facilities used in these wheeling activities does not exceed the capacity required to serve their otherwise qualified two county or city and a county service area.

In general, if a local furnisher ceases to qualify as such, interest on outstanding tax-exempt bonds issued for its benefit becomes taxable, and interest payments by the local furnisher on loans securing the bonds becomes nondeductible. A special election allows local furnishers to avoid these penalties if the local furnishers do not benefit from any tax-exempt bonds issued after August 19, 1996. If that election is made, in lieu of loss of tax-exemption on outstanding bonds and loss of interest deductions on underlying loans, all outstanding bonds from which the local furnisher benefits must be redeemed no later than six months after the earliest date on which redemption is permitted under the bond covenants (or the date of the election, if later). This election must be made for all local furnishing facilities of the local furnisher rather than on a facility-by-facility or bond-issue-by bond-issue basis.

Additional restrictions imposed on private activity tax-exempt bonds

State volume limitations.—Issuance of most tax-exempt private activity bonds is subject to an annual volume limitation that each State receives. Each State (including local governments within the State) is allowed to issue an annual amount of these bonds not exceeding the greater of \$62.50 per resident of the State or \$187.5 million in calendar year 2001. These volume limits are scheduled to increase to \$75 per resident of the State or \$225 million beginning in calendar year 2002. Beginning in calendar year 2003, the volume limit will be adjusted annually for inflation. States may elect to carryover their unused private activity bond volume authority for designated activities for a period of up to three years. Bond authority that is not used within the carryforward period lapses.

This limit also applies to the private business portion of certain larger governmental bond issues; such private business use in excess of \$15 million (and up to the permitted 10 percent of the issue) must receive an allocation of State volume limitation for interest on the overall bond issue to be tax-exempt.²⁷ Exceptions to the volume limitation are provided for bonds to finance airports, ports, solid waste disposal facilities (if governmentally owned), qualified 501(c)(3) bonds, and high speed intercity rail facility bonds (if governmentally owned), and bonds for environmental enhancements of hydro-electric generating facilities. Additionally, bonds for privately owned high-speed intercity rail facilities are required to receive a State volume limitation allocation only for 25 percent of the amount of the bonds.

Miscellaneous other restrictions.—Tax-exempt private activity bonds are subject to several other restrictions that do not apply to governmental bonds. These restrictions include the requirement of

²⁷ Unlike this general provision for larger governmental bond issues, the \$15 million limit on private business use of output facility bonds, described above, is an absolute limit which may not be waived by an allocation of State private activity bond volume limitation.

a public hearing and approval of their issuance by an appropriate elected governmental official, a prohibition on advance refundings,²⁸ a restriction on the term to maturity of the bonds measured by reference to the economic lives of the property to be financed, minimum rehabilitation requirements for bonds used to finance acquisition of existing property, and, in general, slightly more restrictive limits on arbitrage profits that may be earned.²⁹

Penalties for violation of tax-exempt bond restrictions after issuance

General change in use penalties and administrative alternatives

In general, the determination of whether interest on State or local government bonds is tax-exempt is made when the bonds are issued. That is, the determination is made by reference to how the bond proceeds are “to be used” (sec. 141). Intentional acts after the date of issuance to use bond-financed property (indirectly a use of bond proceeds) in a manner not qualifying for tax exemption may render interest on the bonds taxable, retroactive to the date of issuance (the “change in use rules”). Such a prohibited change in use may be illustrated by the subsequent sale of public power electric output to private businesses in a manner not qualifying for tax exemption after the bond-financed property is placed in service. Other privatization programs transferring the operation of State or local government programs to private businesses similarly can give rise to a prohibited change in use as can the sale or lease of bond-financed State or local government facilities to private businesses.

Treasury Department regulations and an accompanying Revenue Procedure, provide alternative remedies to loss of tax-exemption for certain changes in use of governmental bonds.³⁰ The alternative remedies are available only if five conditions are satisfied:

- (1) The issuer of the bonds must have reasonably expected on the date of the borrowing that the bonds would not meet the private business and private loan tests (i.e., would not become private activity bonds) for their entire term;³¹

²⁸ The prohibition does not apply to qualified 501(c)(3) bonds. Governmental bonds and qualified 501(c)(3) bonds may be advance refunded one time. An advance refunding occurs when the refunded bonds remain outstanding for a period greater than 90 days after issuance of the refunding bonds. Advance refundings typically are undertaken because an issuer includes provisions in its original bond documents agreeing not to redeem the bonds before expiration of a minimum period. Advance refundings are used to restructure debt service generally, to eliminate restrictive covenants contained in outstanding bond documents, or to hedge against anticipated future interest rate increases by locking in for the future what is believed to be a favorable rate. In an advance refunding both the refunded and the refunding bonds remain outstanding until the refunded bonds may be redeemed under their contractual terms. Proceeds of the refunding bonds are deposited in a yield-restricted escrow account until that time.

²⁹ The Code in general limits the amount of arbitrage profits that may be earned on tax-exempt bonds and requires that most such profits be rebated to the Federal Government. These provisions are designed to preclude issuance of tax-exempt bonds earlier than necessary for the governmental or approved private activity which is the stated purpose of the borrowing or in larger amounts than required for the purpose. Absent such restrictions, State or local governments as tax-exempt entities could borrow at tax-exempt rates and invest in, for example, taxable Federal Government debt, as an income production undertaking. Such an undertaking would reduce Federal revenues by substituting tax-exempt debt for taxable debt in the hands of taxable bond investors.

³⁰ Treas. Reg. sec. 1.141-12; Rev. Proc. 97-15, 1997-1 C.B. 635.

³¹ Absent satisfaction of this reasonable expectations test, bonds are eligible for the alternative remedies only if the issuer (1) on the issue date, reasonably expected to use the bond-financed property in a qualified use for a substantial period, (2) redeems all nonqualified bonds within six months of any action changing that use to a nonqualified one, (3) has no arrangement with a private business as of the issue date regarding a nonqualified change in use, and (4) otherwise meets the regulatory remedial actions. The requirement that all nonqualified bonds be redeemed includes redemption in cases where bond-financed property is disposed of for less than the un-

(2) The term of the bonds must not be longer than is reasonably necessary for the governmental purposes of the borrowing;

(3) The change in use must result from a bona fide, arm's length transaction for fair market value;³²

(4) Any disposition proceeds must be treated as "gross proceeds" of the bond issue, subject to the Code arbitrage rules; and

(5) The bond proceeds must have been spent for the purpose of the borrowing before the change in use occurs (unless the bonds are redeemed) (Treas. Reg. sec. 1.141-12(a)).

If the five conditions are satisfied, four possible alternative remedies to loss of tax-exemption are available for post-bond-issuance actions violating the private business tests. First, all currently callable bonds may be redeemed within 90 days after the change in use and all other bonds may be defeased with a yield-restricted escrow and called on the first date when that action is permitted under the bond terms (Treas. Reg. sec. 1.141-12(d)).³³ Second, in the case of dispositions entirely for cash where the bond issuer expects to spend the disposition proceeds within two years after the change in use, the disposition proceeds may be treated as bond proceeds and used accordingly, subject to all of the Code's tax-exempt bond provisions (Treas. Reg. sec. 1.141-12(e)). To the extent the disposition proceeds are not used for a qualifying use within the two-year period, bonds must be redeemed.

A third remedy provides that loss of tax-exemption will not occur if bond-financed property is transferred in a transaction constituting a change in use from a governmental use to a use that is eligible for financing with tax-exempt private activity bonds provided that the issuer treats the bonds as reissued on the date the change in use occurs and satisfies rules applicable to the revised use of the bonds (including where applicable, allocation of State private activity bond volume limitation) (Treas. Reg. sec. 1.141-12(f)).³⁴ The final alternative remedy to loss of tax-exemption allows the issuer to pay the Federal Government an amount equal to lost tax revenues from allowing nonqualified tax-exempt bonds to remain outstanding as tax-exempt (Rev. Proc. 97-15).

Additional change in use penalties for private activity tax-exempt bonds

In addition to loss of tax-exemption on bond interest, conduit borrowers receiving tax-exempt private activity bond financing lose interest deductions on their underlying loans if the use of the bond-financed property changes to a non-qualified use after issuance (the "additional change-in-use rules"). For example, if the output of an IOU facility for the local furnishing of electric service is used to provide service beyond the permitted two county or city and a

paid bond amount. In such cases, the issuer must make up any shortfall in the disposition proceeds from other sources to avoid bond interest being rendered taxable.

³²The determination of fair market value may take into account restrictions on the use of the bond-financed property that serve "a bona fide government purpose."

³³The maximum period of the escrow account may not exceed 10-1/2 years.

³⁴Because the original tax-exempt bonds remain outstanding, a purchaser of property financed with tax-exempt bonds qualifying for this remedy is not permitted to finance any acquisition costs with additional tax-exempt bonds (e.g., tax-exempt exempt-facility bonds could not be issued to finance the transfer of a governmental solid waste disposal system to a private business).

county area, interest paid by the IOU on loans underlying the tax-exempt bonds is nondeductible (sec. 150(b)(4)).³⁵

REASONS FOR CHANGE

The committee determined that modifications to the tax-exempt bond private business use rules are appropriate in light of the changing structure of the electric service industry.

EXPLANATION OF PROVISION

The bill provides special, liberalized private business use rules for bonds issued by public power entities to finance electric output facilities when the entities participate in qualifying electric industry restructuring arrangements. These rules apply both to facilities financed with currently outstanding bonds and to certain facilities financed with bonds issued in the future. The bill further allows public power entities that engage in activities beyond those allowed under the liberalized private business use rules to elect to forego certain future issuances of tax-exempt bonds while preserving the tax-exempt status of their previously issued bonds. (This portion of the bill primarily affects electric generation facilities.) Finally, the bill modifies current rules regarding issuance of tax-exempt bonds for the acquisition of existing electric output facilities. The provision applies only to governmental bonds issued by public power entities. Thus, bond-financed facilities must be governmentally owned, determined under generally applicable tax rules.

Liberalize private business use rules

The bill provides that no private business use arises in transactions (that otherwise would violate present-law restrictions) that are either (1) “permitted open access activities,” or (2) “permitted sales transactions.” The effect of this provision is to protect the tax-exempt status of interest on previously issued electric output facility bonds and to allow future issuance of such bonds for facilities to be used consistent with the new rules.

Permitted open access transmission and distribution activities are defined as—

(1) Activities pursuant to an open access transmission tariff filed with and approved by the FERC³⁶ (including an acceptable reciprocity tariff), but only if, in the case of a voluntarily filed tariff, the public power entity files a report with the FERC within 90 days of enactment relating to whether it will join a regional transmission organization (“RTO”).

(2) Activities under an RTO agreement approved by FERC. Permitted activities include the transfer of control (but not ownership) of transmission facilities.

(3) Delivery on a nondiscriminatory open access basis of electric energy sold to end-users served by distribution facilities owned by the public power entity or of electric energy generated by genera-

³⁵ An exception to this rule, enacted in 1996 and described above, provided that this penalty and loss of tax-exemption on bonds not apply to bonds issued before August 20, 1996, in the case of service territory expansions by local furnishers of electricity or gas that elect to forego additional tax-exempt financing from bonds issued after August 19, 1996, and satisfy certain other conditions.

³⁶ The term FERC includes the Public Utility Commission of Texas in the case of an ERCOT utility.

tion facilities connected to distribution facilities owned by that entity.

Permitted sales

The category of permitted sales transactions relates to sales from existing generation facilities and is in addition to any sales allowed as an open access activity. Existing generation facilities are defined as facilities that were in operation on or under construction before June 1, 2000, and were owned by the governmental unit on that date. Permitted sales transactions are defined as—

(1) Sales to on-system purchasers whose facilities are directly connected to those of the seller if the seller provides open access distribution services (and transmission services if the seller owns transmission facilities).

The effect of this provision is to waive completely the private business use restrictions on the types of contracts that public power entities may enter with on-system consumers. On-system purchasers are defined as retail purchasers that were within the seller's distribution area at the close of the prescribed base year or are persons to whom the seller has a statutory service obligation. On-system purchasers also include wholesale native load purchasers, defined as below under (2), whose facilities are directly connected to those of the seller.

(1) Wholesale sales to a "native load" purchaser, defined as a purchaser to whom the seller had a statutory service obligation at wholesale in a defined base year or an obligation in the base year under a requirements contract or a firm sales contract which had been in effect for at least 10 years (or in the case of newer contracts in existence on the date of the proposal's enactment, had an initial term of at least 10 years). Wholesale purchasers can only resell the electricity at retail to persons within their distribution area (i.e., cannot be power marketers).

(2) Load loss sales, defined as wholesale sales to persons to whom the seller does not have a service obligation. These sales can be made without geographic limitation. The amount of load loss sales is limited by a formula based on annual sales reductions during a seven-year period following the base year.

Special rules for transmission facilities

After date of enactment, tax-exempt bonds for new transmission facilities generally may only be issued for "local transmission facilities." Local transmission facilities are defined as facilities located within the public power entity's distribution area that are necessary to supply electricity to serve retail load or wholesale native load of the issuer or of one or more public power entities which are directly connected to such electric transmission facility.

The term retail load is defined as the load of end-users served by distribution facilities owned by a public power entity, without regard to whether any service obligation to the geographic area currently exists. The term wholesale native load is defined as the retail native load of a public power entity's wholesale native load purchasers and other purchasers to whom electricity was being sold under requirements contracts in the base year.

Exceptions

Notwithstanding the general limitation on future transmission bond issuance, tax-exempt bonds can continue to be issued in the following circumstances, including for facilities that would not qualify as local transmission facilities, if the bonds are issued—

- (1) To refund (including advance refund) bonds issued before the date of enactment;
- (2) To finance any repair of a transmission facility that is in service on the date of the proposal's enactment, provided that the repair does not increase the voltage level of the facility over its base year level or increase the thermal load limit of the facility by more than three percent;
- (3) To finance any qualifying upgrade of a transmission facility in service on the date of the proposal's enactment;
- (4) To finance a transmission facility necessary to comply with an obligation under a shared or reciprocal transmission agreement in effect on the date of the bill's enactment

Special rules for start-up distribution facilities

The bill generally prohibits issuance of tax-exempt bonds for distribution facilities by newly established public power entities before the date on which the entity has provided electric service in an area for a period of ten years. This provision does not limit expansions of the service territory of existing public power entities. Similarly, public power entities can commence operations in the service territories of other public power entities without violating the restriction.

Election to forego issuance of certain future tax-exempt bonds for increased generating capacity in exchange for elimination of all private business use restrictions on existing bonds

Public power entities desiring to engage in activities not qualifying under the liberalized private business use restrictions included in the provision will be allowed to make a special election to forego issuance of future tax-exempt bonds for new generating capacity without affecting the tax-exemption on outstanding bonds. Nonetheless, tax-exempt bonds may be issued by these entities following such an election for the following—

- (1) To refund (including advance refund) bonds issued before the date of enactment;
- (2) To finance any transmission or distribution facility that continued to be used in qualified open access activities after the date of the election;
- (3) To finance any governmentally owned equipment or facilities “necessary to meet Federal or State environmental requirements” applicable to an existing generation facility;
- (4) To finance any repair of any governmentally owned generation facility the construction of which had commenced before June 1, 2000, provided that the repair does not increase the generating capacity by more than three percent above the greater of its nameplate or rated capacity as of the date of the bill's enactment.
- (5) To finance any wind, biomass, solar, or geothermal energy generating facility during a period when income tax cred-

its are allowed with respect to production from similar facilities placed in service by taxpayers.

EFFECTIVE DATE

Subject to two exceptions, these provisions are effective on the date of enactment, applicable both to outstanding bonds and to bonds issued after that date. The first exception allows public power entities to elect to apply the rules with respect to permitted open access activities occurring on or after April 14, 1996. The second exception provides that the repeal of certain special exceptions to rules governing bonds for the acquisition of existing electric output property do not apply to any acquisition pursuant to any agreement entered into before the date of the bill's enactment.

G. SALES OR DISPOSITIONS UNDER SECTION 1033 TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY

(Sec. 208 of the Bill and Sec. 1033 of the Code)

PRESENT LAW

Generally, a taxpayer recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

Under section 1033, gain realized by a taxpayer from an involuntary conversion of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within the applicable period. The replacement property may be acquired directly or by acquiring control of a corporation (generally, 80 percent of the stock of the corporation) that owns the replacement property. The taxpayer's basis in the replacement property generally is the same as the taxpayer's basis in the converted property, decreased by the amount of any money or loss recognized on the conversion, and increased by the amount of any gain recognized on the conversion.

The applicable period for the taxpayer to replace the converted property begins with the date of the disposition of the converted property (or if earlier, the earliest date of the threat or imminence of requisition or condemnation of the converted property) and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized (the "replacement period").

Section 1033(g) provides that if real property held for productive use in a trade or business or investment is involuntarily converted, then property of a like kind shall be considered similar or related in service or use to real property involuntarily converted. In general, with respect to other business property the Internal Revenue Service takes the position that replacement property will not qualify as similar or related in service or use unless its physical characteristics and end uses are similar to the converted property.³⁷

³⁷ Revenue Ruling 64-237, 1964-2 C.B. 319.

Section 1245 requires that gain from the disposition of certain types of depreciable property³⁸ be characterized as ordinary income to the extent of previously allowed depreciation deductions. Generally, such gain is recognized in the year of disposition notwithstanding any other provision. An exception from immediate recognition of such gain is provided for involuntary conversions of property. In such cases, the amount of ordinary income is limited to any gain recognized (without regard to section 1245), plus the fair market value of property acquired in exchange for depreciable property where the latter is exchanged for nondepreciable property or other non-qualifying property.³⁹

REASONS FOR CHANGE

The Committee recognizes that electric deregulation has been occurring, and is continuing to occur, at both the Federal and State level. Federal and state energy regulators are calling for the “unbundling” of electric transmission assets held by vertically integrated utilities, with the transmission assets ultimately placed under the ownership or control of regional transmission organizations (or other similarly-approved operators). This policy is intended to improve transmission management and facilitate the formation of competitive markets. To facilitate the implementation of these policy objectives, the Committee believes it is appropriate to assist taxpayers in moving forward with industry restructuring by providing a tax deferral for gain associated with certain dispositions of electric transmission assets. The Committee believes it is important that proceeds of such dispositions be reinvested in utility property to assist in modernizing our energy infrastructure. Thus, a deferral of gain will only be available if the proceeds of such disposition are reinvested in other utility property.

EXPLANATION OF PROVISION

The provision permits a taxpayer to elect to treat an electric transmission transaction as an involuntary conversion and expand the types of replacement property that qualify as related or similar in use to converted electric transmission property.

Under the provision, a taxpayer may elect to treat the sale or other disposition of property used in the trade or business of providing electric transmission services, or an ownership interest in an entity whose principal trade or business consists of providing electric transmission services, to an independent transmission company⁴⁰ prior to January 1, 2009 (a “qualifying electric transmission transaction”) as an involuntary conversion.

³⁸Section 1245 applies generally to property subject to the allowance for depreciation under section 167 that is either personal property or other tangible property used in certain activities (including tangible property used in the furnishing of electrical energy, gas, water or sewage disposal services). Section 1245(a)(3).

³⁹The realization of ordinary income is necessary in such cases since in the case because there is no opportunity for subsequent recovery of the ordinary income element.

⁴⁰In general, an independent transmission company is defined as: (1) a regional transmission organization approved by the FERC; (2) a person (i) who the FERC determines under section 203 of the Federal Power Act is not a “market participant” and (ii) whose transmission facilities are placed under the operational control of a FERC-approved regional transmission organization before the close of the replacement period (up to four years) for such transaction; or (3) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person who is approved by that commission as consistent with Texas state law regarding an independent transmission organization.

The provision provides that exempt utility property be treated as similar or related in service or use to electric transmission property converted in a qualifying electric transmission transaction. Exempt utility property is defined as: (1) property used in the trade or business of generating, transmitting, distributing, or selling electricity or producing, transmitting, distributing, or selling natural gas, or (2) stock in a controlled corporation whose principal trade or business consists of the activities described in (1).

The provision extends the applicable period for a taxpayer to replace the converted property in a qualifying electric transmission transaction from two years to four years after the close of the first taxable year in which any part of the gain on conversion is realized.

In addition, if a taxpayer is a member of an affiliated group of corporations filing a consolidated return, the provision permits the replacement property to be purchased by any member of the affiliated group (in lieu of the taxpayer).⁴¹

The provision also provides an exception to section 1245 gain recognition for a qualifying electric transmission transaction if the taxpayer (or any member of the affiliated group) reduces other section 1245 property by the amount of gain that would otherwise (absent this provision) be recognized solely due to section 1245.⁴²

A taxpayer electing the provisions of the provision is required to attach a statement to that effect in the tax return for the taxable year in which the transaction takes place in the manner as the Secretary shall prescribe. The election shall be binding for that taxable year and all subsequent taxable years.

EFFECTIVE DATE

The provision is effective for transactions after the date of enactment.

H. DISTRIBUTIONS OF STOCK UNDER SECTION 355(e) TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY

(Sec. 209 of the Bill and Sec. 355 of the Code)

PRESENT LAW

A corporation generally is required to recognize gain on the distribution of property (including stock of a subsidiary) as if such property had been sold for its fair market value. The shareholders generally treat the receipt of property as a taxable event as well. Section 355 of the Internal Revenue Code provides an exception to this rule for certain “spin-off” type distributions of stock of a controlled corporation, provided that various requirements are met, including certain restrictions relating to acquisitions and dispositions of stock of the distributing corporation (“distributing”) or the con-

⁴¹It is anticipated that the Secretary of the Treasury will issue guidance as may be necessary to ensure that gain shall not be recognized under the consolidated return provisions and to ensure that any investment adjustments, or any other adjustments under the consolidated regulations, accurately reflect the implications of permitting another member of the consolidated group to purchase the replacement property or reduce the basis of depreciable property.

⁴²The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary of the Treasury.

trolled corporation (“controlled”) prior and subsequent to a distribution.

The Taxpayer Relief Act of 1997 adopted additional restrictions under section 355 on acquisitions and dispositions of the stock of the distributing or controlled corporation. Generally, if in connection with a distribution to which section 355 otherwise applies, either the distributing or controlled corporation is acquired pursuant to a plan (or series of related transactions), gain is recognized to the distributing corporation as of the date of the distribution.⁴³ The amount of gain recognized is the amount that the distributing corporation would have recognized had the stock of the controlled corporation been sold for fair market value on the date of the distribution. Acquisitions occurring within the four-year period beginning two years before the date of distribution are presumed to have occurred pursuant to a plan unless the taxpayer establishes otherwise. Certain acquisitions are not taken into account in determining whether a 50-percent or greater interest in the distributing or controlled corporation has been acquired for this purpose.⁴⁴

REASONS FOR CHANGE

Federal and state energy regulators are calling for the “unbundling” of electric transmission assets held by vertically integrated utility companies, with the transmission assets ultimately placed under the ownership or control of regional transmission organizations (or other similarly-approved operators). This policy is intended to improve transmission management and facilitate the formation of competitive markets. To facilitate the implementation of these policy objectives, the Committee believes it is appropriate to provide temporary relief from gain recognition to utility companies that distribute the stock of their transmission subsidiaries if, as part of a pre-arranged plan, an independent transmission company acquires such stock.

EXPLANATION OF PROVISION

The provision creates an exception to section 355(e) for the acquisition of stock (or assets) of any controlled corporation in a “qualifying electric transmission transaction.” For this purpose, a qualifying electric transmission transaction is defined as the sale or other disposition of property used in the trade or business of providing electric transmission services, or an ownership interest in an entity whose principal trade or business consists of providing electric transmission services, to an independent transmission company prior to January 1, 2009.⁴⁵ Thus, for example, a distribution of the stock of a controlled corporation whose principal trade or business consists of providing electric transmission services, to which section 355 otherwise applies, does not result in gain to the distributing corporation under section 355(e) if the controlled corporation is acquired by an independent transmission company

⁴³ Section 355(e).

⁴⁴ Section 355(e)(3)(A). In addition, section 355(e)(3)(B) treats certain asset acquisitions as stock acquisitions for this purpose.

⁴⁵ It is defined in the same manner as under the provision that provides for deferral of gain for these transactions under section 1033.

(prior to January 1, 2009) pursuant to a plan in effect on the date of the distribution.

EFFECTIVE DATE

The provision is effective for distributions occurring after the date of enactment.

I. MODIFICATION TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS

(Sec. 210 of the Bill and Sec. 468A of the Code)

PRESENT LAW

Overview

Special rules dealing with nuclear decommissioning reserve funds were adopted by Congress in the Deficit Reduction Act of 1984 (“1984 Act”), when tax issues regarding the time value of money were addressed generally. Under general tax accounting rules, a deduction for accrual basis taxpayers is deferred until there is economic performance for the item for which the deduction is claimed. However, the 1984 Act contains an exception under which a taxpayer responsible for nuclear powerplant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund for future decommissioning costs. Taxpayers who do not elect this provision are subject to general tax accounting rules.

Qualified nuclear decommissioning fund

A qualified nuclear decommissioning fund (a “qualified fund”) is a segregated fund established by a taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, management costs of the fund, and for making investments. The income of the fund is taxed at a reduced rate of 20 percent for taxable years beginning after December 31, 1995.⁴⁶

Contributions to a qualified fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers (the “cost of service requirement”).⁴⁷ Funds withdrawn by the taxpayer to pay for decommissioning costs are included in the taxpayer’s income, but the taxpayer also is entitled to a deduction for decommissioning costs as economic performance for such costs occurs.

Accumulations in a qualified fund are limited to the amount required to fund decommissioning costs of a nuclear powerplant for the period during which the qualified fund is in existence (generally post-1984 decommissioning costs of a nuclear powerplant). For this purpose, decommissioning costs are considered to accrue ratably over a nuclear powerplant’s estimated useful life. In order to prevent accumulations of funds over the remaining life of a nu-

⁴⁶As originally enacted in 1984, a qualified fund paid tax on its earnings at the top corporate rate and, as a result, there was no present-value tax benefit of making deductible contributions to a qualified fund. Also, as originally enacted, the funds in the trust could be invested only in certain low risk investments. Subsequent amendments to the provision have reduced the rate of tax on a qualified fund to 20 percent and removed the restrictions on the types of permitted investments that a qualified fund can make.

⁴⁷Taxpayers are required to include in gross income customer charges for decommissioning costs (sec. 88).

clear powerplant in excess of those required to pay future decommissioning costs of such nuclear powerplant and to ensure that contributions to a qualified fund are not deducted more rapidly than level funding (taking into account an appropriate discount rate), taxpayers must obtain a ruling from the IRS to establish the maximum annual contribution that may be made to a qualified fund (the “ruling amount”). In certain instances (e.g., change in estimates), a taxpayer is required to obtain a new ruling amount to reflect updated information.

A qualified fund may be transferred in connection with the sale, exchange or other transfer of the nuclear powerplant to which it relates. If the transferee is a regulated public utility and meets certain other requirements, the transfer will be treated as a non-taxable transaction. No gain or loss will be recognized on the transfer of the qualified fund and the transferee will take the transferor’s basis in the fund.⁴⁸ The transferee is required to obtain a new ruling amount from the IRS or accept a discretionary determination by the IRS.⁴⁹

Nonqualified Nuclear Decommissioning Funds

Federal and State regulators may require utilities to set aside funds for nuclear decommissioning costs in excess of the amount allowed as a deductible contribution to a qualified fund. In addition, taxpayers may have set aside funds prior to the effective date of the qualified fund rules.⁵⁰ The treatment of amounts set aside for decommissioning costs prior to 1984 varies. Some taxpayers may have received no tax benefit while others may have deducted such amounts or excluded such amounts from income. Since 1984, taxpayers have been required to include in gross income customer charges for decommissioning costs (sec. 88), and a deduction has not been allowed for amounts set aside to pay for decommissioning costs except through the use of a qualified fund. Income earned in a nonqualified fund is taxable to the fund’s owner as it is earned.

REASONS FOR CHANGE

The Committee recognizes the national importance of reserving funds to pay for decommissioning costs and the need for appropriate incentives to ensure that adequate funds are available for such costs. The Committee believes that it is appropriate to permit all decommissioning costs associated with a nuclear powerplant to be funded through a qualified fund. In addition, the Committee does not believe a utility should be denied the opportunity to contribute to a qualified fund simply because it operates in a deregulated environment.

EXPLANATION OF PROVISION

Repeal of cost of service requirement

The provision repeals the cost of service requirement for deductible contributions to a nuclear decommissioning fund. Thus, all taxpayers, including unregulated taxpayers, are allowed a deduction for amounts contributed to a qualified fund.

⁴⁸Treas. reg. sec. 1.468A-6.

⁴⁹Treas. reg. sec. 1.468A-6(f).

⁵⁰These funds are generally referred to as “nonqualified funds.”

Permit contributions to a qualified fund for pre-1984 decommissioning costs

The provision also repeals the limitation that a qualified fund only accumulate an amount sufficient to pay for a nuclear powerplant's decommissioning costs incurred during the period that the qualified fund is in existence (generally post-1984 decommissioning costs). Thus, any taxpayer is permitted to accumulate an amount sufficient to cover the present value of 100 percent of a nuclear powerplant's estimated decommissioning costs in a qualified fund. The provision does not change the requirement that contributions to a qualified fund not be deducted more rapidly than level funding.

Exception to ruling amount for certain decommissioning costs

The provision permits a taxpayer to make contributions to a qualified fund in excess of the ruling amount in one circumstance. Specifically, a taxpayer is permitted to contribute up to the present value of the amount required to fund a nuclear powerplant's decommissioning costs which, under present law, is not permitted to be accumulated in a qualified fund (generally pre-1984 decommissioning costs).⁵¹ It is anticipated that an amount that is permitted to be contributed under this special rule shall be determined using the estimate of total decommissioning costs used for purposes of determining the taxpayer's most recent ruling amount. Any amount transferred to the qualified fund under this special rule that has not previously been deducted, or excluded from gross income is allowed as a deduction over the remaining useful life of the nuclear powerplant.⁵² If a qualified fund that has received amounts under this rule is transferred to another person, that person will be entitled to the deduction at the same time and in the same manner as the transferor. Thus, if the transferor was not subject to tax at the time and thus would have been unable to use the deduction, the transferee will similarly not be able to utilize the deduction.

Contributions to a qualified fund after useful life of powerplant

The provision also allows deductible contributions to a qualified fund subsequent to the end of a nuclear powerplant's estimated useful life. Such payments are permitted to the extent they do not cause the assets of the qualified fund to exceed the present value of the taxpayer's allocable share (current or former) of the nuclear decommissioning costs of such nuclear powerplant.

Clarify treatment of transfers of qualified funds and deductibility of decommissioning costs

The provision clarifies the Federal income tax treatment of the transfer of a qualified fund. No gain or loss would be recognized to

⁵¹ The ability to transfer property into a qualified fund under this special rule is available only to the extent the taxpayer has not obtained a new ruling amount incorporating the repeal of the limitation that a qualified fund only accumulate an amount sufficient to pay for decommissioning costs of a nuclear powerplant incurred during the period that the fund is in existence (generally post 1984 decommissioning costs).

⁵² A taxpayer recognizes no gain or loss on the contribution of property to a qualified fund under this special rule. The qualified fund will take a transferred (carryover) basis in such property. Correspondingly, a taxpayer's deduction (over the estimated life of the nuclear powerplant) is to be based on the adjusted tax basis of the property contributed rather than the fair market value of such property.

the transferor or the transferee as a result of the transfer of a qualified fund in connection with the transfer of the power plant with respect to which such fund was established. In addition, the provision provides that all nuclear decommissioning costs are deductible when paid.

EFFECTIVE DATE

The provision would be effective for taxable years beginning after December 31, 2001.

J. TREATMENT OF CERTAIN INCOME OF ELECTRIC COOPERATIVES

(Sec. 211 of the Bill and Secs. 501 and 512 of the Code)

PRESENT LAW

In general

Federal tax rules require any entity that is formed as a cooperative to operate on a cooperative basis. Although not defined by statute or regulation, the two principal criteria for determining whether an entity is operating on a cooperative basis are: (1) ownership of the cooperative by persons who patronize the cooperative; and (2) return of earnings to patrons in proportion to their patronage. The Internal Revenue Service requires that cooperatives must operate under the following principles: (1) subordination of capital to control over the cooperative undertaking and financial benefits from ownership; (2) democratic control by the members of the cooperative; (3) vesting in and allocation among the members of all excess of operating revenues over the expenses incurred to generate revenues in proportion to their participation in the cooperative (patronage); and (4) operation at cost (not operating for profit or below cost).⁵³

In general, cooperative members are those who participate in the management of the cooperative and who share in patronage capital. Income from the sale of electric energy by the cooperative may be member or non-member income to the cooperative, depending on the membership status of the purchaser. A municipal corporation may be a member or non-member of a cooperative.

Code section 1381(a)(2)(C) provides that the statutory tax rules for cooperatives under subchapter T (Code sections 1381 through 1388) do not apply to rural electric cooperatives.

Tax exemption of rural electric cooperatives

Section 501(c)(12) provides an income tax exemption for rural electric cooperatives if at least 85 percent of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses of providing service to its members. The Internal Revenue Service takes the position that rural electric cooperatives also must comply with the fundamental cooperative principles described above in order to qualify for tax exemption under section 501(c)(12).⁵⁴ The 85-percent test is determined without taking into account any income from qualified pole

⁵³ Announcement 96-24, Proposed Examination Guidelines Regarding Rural Electric Cooperatives, 1996-16 I.R.B. 35.

⁵⁴ Rev. Rul. 72-36, 1972-1 C.B. 151.

rentals and cancellation of indebtedness income from prepayment of a loan under sections 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987). Rural electric cooperatives generally are subject to the tax on unrelated trade or business income under Code section 511.

REASONS FOR CHANGE

The purpose of the 85-percent test under section 501(c)(12) is to ensure that the primary activities of an electric cooperative fulfill the statutory tax-exempt purpose of providing electricity services to the members of the cooperative. Similarly, the fundamental cooperative principles described above are the defining characteristics of a cooperative upon which the Federal tax rules condition conduit treatment.

The committee believes that the nature of an electric cooperative's activities does not change because it has income from open access transactions with non-members or from nuclear decommissioning transactions (as these terms are defined in the bill). Accordingly, the committee believes that the 85-percent test for tax exemption under present law should be applied without regard to such income. The committee intends that the term "open access transaction" shall be applied in a manner that allows an electric cooperative to carry out its statutory purpose in a restructured and deregulated electric energy market environment without adversely impacting its tax-exempt status.

The committee further believes that electric energy sales to non-members should not result in a loss of tax-exempt status or cooperative status to the extent that such sales are necessary to replace lost sales of electric energy to members as a result of restructuring and deregulation of the electric energy industry. Accordingly, the committee believes that replacement electric energy sales to non-members (defined as "load loss transactions" in the bill) should be treated, for a limited period of time, as member income in applying the 85-percent test for tax exemption of rural electric cooperatives. The committee believes that such treatment also should apply for purposes of determining whether tax-exempt and taxable electric cooperatives comply with the fundamental cooperative principles. Finally, the committee believes that income from replacement electric energy sales should not be subject to the tax on unrelated trade or business income under Code section 511.

EXPLANATION OF PROVISION

Treatment of income from open access transactions

The bill provides that income received or accrued by a rural electric cooperative from any "open access transaction" (other than income received or accrued directly or indirectly from a member of the cooperative) is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).⁵⁵ The term "open access transaction" is defined as any activity that would be a "permitted open access activity"

⁵⁵ This provision does not apply to open access transaction income that is directly or indirectly received or accrued from cooperative members because such income generally is treated as member income for purposes of the 85-percent test. For example, the provision does not apply to income that is directly or indirectly received or accrued by a cooperative for billing and collection services performed by the cooperative with respect to a member of that cooperative.

under the proposal concerning the tax-exempt bond rules for government-owned electric output facilities.

As applied to rural electric cooperatives, the term “permitted open access activity” is defined as—

(1) the provision of transmission services and ancillary services on a nondiscriminatory open access basis pursuant to an open access transmission tariff filed with and approved by the Federal Energy Regulatory Commission (“FERC”) (including acceptable reciprocity tariffs), but only if (in the case of a voluntarily filed tariff) the cooperative files a report with FERC within 90 days of enactment of this provision relating to whether or not the cooperative will join a regional transmission organization (“RTO”);

(2) the provision of transmission services and ancillary services on a nondiscriminatory open access basis under an RTO agreement approved by FERC (including the transfer of control—but not ownership—of transmission facilities); or

(3) the delivery on a nondiscriminatory open access basis of electric energy sold to end-users served by distribution facilities owned by the cooperative or of electric energy generated by generation facilities directly connected to distribution facilities owned by that cooperative.

Treatment of income from nuclear decommissioning transactions

The bill provides that income received or accrued by a rural electric cooperative from any “nuclear decommissioning transaction” also is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term “nuclear decommissioning transaction” is defined as—

(1) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative’s interest in a nuclear powerplant or nuclear powerplant unit;

(2) any distribution from such a trust, fund, or instrument;

or

(3) any earnings from such a trust, fund, or instrument.

Treatment of income from load loss transactions

Rural electric cooperatives.—The bill provides that income received or accrued by a rural electric cooperative from a “load loss transaction” is treated under 501(c)(12) as income collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Therefore, income from load loss transactions is treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The bill also provides that income from load loss transactions does not cause a rural electric cooperative to fail to be treated for Federal income tax purposes as a mutual cooperative company under the fundamental cooperative principles described above.

The term “load loss transaction” is defined as any sale that would be a “load loss sale” under the provision concerning the tax-exempt bond rules for government-owned electric output facilities. As applied to cooperatives, the term “load loss sale” generally is de-

defined as any wholesale or retail sale (other than directly or indirectly to members) that, when combined with other load loss sales during the same year, does not exceed the annual reduction of sales by the cooperative to members each year during a seven-year period following a base year. The sales could be made during the eighth year following the base year under certain circumstances.

The bill also excludes income received or accrued by rural electric cooperatives from load loss transactions from the tax on unrelated trade or business income.

Taxable electric cooperatives.—The bill provides that similar rules apply to the receipt or accrual of income from load loss transactions of taxable electric cooperatives. For example, income from a load loss transaction is excludible from the income of a taxable electric cooperative if the cooperative distributes such income pursuant to a pre-existing contract to distribute the income to a non-member patron.

EFFECTIVE DATE

This provision is effective for taxable years beginning after the date of enactment.

K. REPEAL OF REQUIREMENT OF CERTAIN APPROVED TERMINALS TO OFFER DYED DIESEL OR KEROSENE FOR NONTAXABLE PURPOSES

(Sec. 212 of the Bill and Sec. 4101 of the Code)

PRESENT AND PRIOR LAW

Excise taxes are imposed on highway motor fuels, including gasoline, diesel fuel, and kerosene, to finance the Highway Trust Fund programs. Subject to limited exceptions, these taxes are imposed on all such fuels when they are removed from registered pipeline or barge terminal facilities, with any tax-exemptions being accomplished by means of refunds to consumers of the fuel. One such exception allows removal of diesel fuel and kerosene without payment of tax if the fuel is destined for a nontaxable use (e.g., use as heating oil) and is indelibly dyed.

Terminal facilities are not permitted to receive and store non-tax-paid motor fuels unless they are registered with the Internal Revenue Service. Under present law, a prerequisite to registration is that if the terminal offers for sale diesel fuel, it must offer both dyed and undyed diesel fuel. Similarly, if the terminal offers for sale kerosene, it must offer both dyed and undyed kerosene. This “dyed-fuel mandate” was enacted in 1997, to be effective on July 1, 1998. Subsequently, the effective date was delayed until July 1, 2000 and delayed again through December 31, 2001.

REASONS FOR CHANGE

When the rules governing taxation of kerosene used as a highway motor fuel were enacted in 1997, there was a concern that dyed kerosene (destined for nontaxable use) might not be available in markets where that fuel was commonly used (e.g., as heating oil). To ensure availability of untaxed kerosene for these uses, a requirement that terminals offer both dyed and undyed kerosene and diesel fuel (if they offered the fuels for sale at all) as a condition of receiving untaxed fuels was included. Since that time, markets

have provided dyed kerosene and diesel fuel for nontaxable uses in markets where there is a demand for such fuel even in the absence of a statutory mandate for such fuels. The Committee believes that a statutory mandate is not necessary and should be repealed.

DESCRIPTION OF PROVISION

The provision repeals the diesel fuel and kerosene-dyeing mandate.

EFFECTIVE DATE

The provision is effective on the date of enactment.

L. EXEMPT CERTAIN PREPAYMENTS FOR NATURAL GAS

FROM TAX-EXEMPT BOND ARBITRAGE RULES

(Sec. 213 of the Bill and Sec. 148 of the Code)

PRESENT LAW

Interest on bonds issued by States or local governments to finance activities carried out or paid for by those entities generally is exempt from income tax (sec. 103). Restrictions are imposed on the ability of States or local governments to invest the proceeds of these bonds for profit (the “arbitrage restrictions”). One such restriction limits the use of bond proceeds to acquire “investment-type property.” The term investment-type property includes the acquisition of property in a transaction involving a prepayment. A prepayment can produce prohibited arbitrage profits when the discount received for prepaying the costs exceeds the yield on the tax-exempt bonds. In general, prohibited prepayments include all prepayments that are not customary in an industry by both beneficiaries of tax-exempt bonds and other persons using taxable financing for the same transaction.

REASONS FOR CHANGE

The Committee determined that a narrow exception to the general restrictions on investing tax-exempt bond proceeds in arbitrage transactions is appropriate for certain prepayments for natural gas. The Committee believes that this exception may assist in stabilizing energy supplies for State and local government utilities.

EXPLANATION OF PROVISION

The provision creates a new exception to the general rule that tax-exempt-bond-financed prepayments violate the arbitrage restrictions. Under the provision, a prepayment financed with tax-exempt bond proceeds for the purpose of obtaining a supply of natural gas to be used in the business of one or more governmental utilities will not be treated as the acquisition of investment-type property.⁵⁶ The exception applies only if at least 85 percent of the

⁵⁶The Committee recognizes that in exceptional circumstances it may be impossible to use the purchased natural gas as originally intended. For example, the Committee intends that if an extraordinary and unforeseen event occurs, such as a fire that severely damages a generating facility for which natural gas is acquired, then selling the natural gas that cannot be used because of the loss of service of the facility to a third party (in a transaction consistent with the general private business use limits) will not cause the bonds financing the gas contract to be arbitrage bonds.

purchased natural gas is to be used by governmental utilities in the State where the issuer of the bonds is located.

EFFECTIVE DATE

The provision applies to bonds issued after October 22, 1986 (the date of enactment of the Tax Reform Act of 1986) except the requirement that at least 85 percent of the purchased gas be for use in the State where the issuer is located does not apply to bonds issued before the date of the provision's enactment.

TITLE III—PRODUCTION

A. TAX CREDIT FOR OIL AND GAS PRODUCTION FROM MARGINAL WELLS

(Sec. 301 of the Bill and New Sec. 45J of the Code)

PRESENT LAW

There is no credit for the production of oil and gas from marginal wells. The costs of such production may be recovered under the Code's depreciation and depletion rules and in other cases as a deduction for ordinary and necessary business expenses.

REASONS FOR CHANGE

The highly volatile price of oil and gas can result in lost production during periods when prices are low. The Committee determined that a price support program administered through a tax credit will help ensure that supply is not lost as a result of low market prices.

EXPLANATION OF PROVISION

The provision creates a new, \$3 per barrel credit for the production of crude oil and a \$0.50 per 1,000 cubic feet of qualified natural gas production. The maximum amount of production on which credit can be claimed is 1,095 barrels or barrel equivalents. In both cases, the credit is available only for production from a "qualified marginal well." The credit is not available to production occurring if the reference price of oil exceeds \$18 (\$2.00 for natural gas). The credit is reduced proportionately as for reference prices between \$15 and \$28 (\$1.67 and \$2.00 for natural gas). Reference prices are determined on a one-year look-back basis.

A qualified marginal well is defined as (1) a well production from which is marginal production for purposes of the Code percentage depletion rules or (2) a well that during the taxable year had (a) average daily production of not more than 25 barrel equivalents and (b) produced water at a rate of not less than 95 percent of total well effluent.

The credit is treated as a general business credit; however, unused credits can be carried back for up to 10 years rather than the generally applicable carryback period of one year.

EFFECTIVE DATE

The provision is effective for production in taxable years beginning after December 31, 2001.

B. TEMPORARY SUSPENSION OF LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME AND EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION

(Sec. 302 of the Bill and Sec. 613A of the Code)

PRESENT LAW

In general

Depletion, like depreciation, is a form of capital cost recovery. In both cases, the taxpayer is allowed a deduction in recognition of the fact that an asset—in the case of depletion for oil or gas interests, the mineral reserve itself—is being expended in order to produce income. Certain costs incurred prior to drilling an oil or gas property are recovered through the depletion deduction. These include costs of acquiring the lease or other interest in the property and geological and geophysical costs (in advance of actual drilling).

Depletion is available to any person having an economic interest in a producing property. An economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in minerals in place, and secures, by any form of legal relationship, income derived from the extraction of the mineral, to which it must look for a return of its capital.⁵⁷ Thus, for example, both working interests and royalty interests in an oil- or gas-producing property constitute economic interests, thereby qualifying the interest holders for depletion deductions with respect to the property. A taxpayer who has no capital investment in the mineral deposit does not possess an economic interest merely because it possesses an economic or pecuniary advantage derived from production through a contractual relation.

Cost depletion

Two methods of depletion are currently allowable under the Internal Revenue Code (the “Code”): (1) the cost depletion method, and (2) the percentage depletion method (secs. 611–613). Under the cost depletion method, the taxpayer deducts that portion of the adjusted basis of the depletable property which is equal to the ratio of units sold from that property during the taxable year to the number of units remaining as of the end of taxable year plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer’s basis in the property.

Percentage depletion and related income limitations

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners.⁵⁸ Generally, under the percentage depletion method 15 percent of the taxpayer’s gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year (sec. 613A(c)). The amount deducted generally may not exceed 100 percent of the net income from that property in any year (the “net-income limitation”) (sec. 613(a)). By contrast, for any other mineral qualifying for the percentage depletion deduction, such deduction may not exceed 50

⁵⁷Treas. Reg. sec. 1.611–1(b)(1).

⁵⁸Sec. 613A.

percent of the taxpayer's taxable income from the depletable property. A similar 50-percent net-income limitation applied to oil and gas properties for taxable years beginning before 1991. Section 11522(a) of the Omnibus Budget Reconciliation Act of 1990 prospectively changed the net-income limitation threshold to 100 percent only for oil and gas properties, effective for taxable years beginning after 1990. The 100-percent net-income limitation for marginal wells has been suspended for taxable years beginning after December 31, 1997, and before January 1, 2002.

Additionally, the percentage depletion deduction for all oil and gas properties may not exceed 65 percent of the taxpayer's overall taxable income (determined before such deduction and adjusted for certain loss carrybacks and trust distributions) (sec. 613A(d)(1)).⁵⁹ Because percentage depletion, unlike cost depletion, is computed without regard to the taxpayer's basis in the depletable property, cumulative depletion deductions may be greater than the amount expended by the taxpayer to acquire or develop the property.

A taxpayer is required to determine the depletion deduction for each oil or gas property under both the percentage depletion method (if the taxpayer is entitled to use this method) and the cost depletion method. If the cost depletion deduction is larger, the taxpayer must utilize that method for the taxable year in question (sec. 613(a)).

Limitation of oil and gas percentage depletion to independent producers and royalty owners

Generally, only independent producers and royalty owners (as contrasted to integrated oil companies) are allowed to claim percentage depletion. Percentage depletion for eligible taxpayers is allowed only with respect to up to 1,000 barrels of average daily production of domestic crude oil or an equivalent amount of domestic natural gas (sec. 613A(c)). For producers of both oil and natural gas, this limitation applies on a combined basis.

In addition to the independent producer and royalty owner exception, certain sales of natural gas under a fixed contract in effect on February 1, 1975, and certain natural gas from geopressed brine,⁶⁰ are eligible for percentage depletion, at rates of 22 percent and 10 percent, respectively. These exceptions apply without regard to the 1,000-barrel-per-day limitation and regardless of whether the producer is an independent producer or an integrated oil company.

REASONS FOR CHANGE

The Committee is concerned that, while current oil and gas operations may be profitable, the highly volatile nature of oil and gas prices could quickly create economic hardships in the industry. The potential problem could be particularly acute in those communities where a large percentage of jobs are related to the oil and gas industry. Thus, to help minimize the adverse effects of future price fluctuations, the Committee believes it is appropriate to suspend

⁵⁹ Amounts disallowed as a result of this rule may be carried forward and deducted in subsequent taxable years, subject to the 65-percent taxable income limitation for those years.

⁶⁰ This exception is limited to wells, the drilling of which began between September 30, 1978, and January 1, 1984.

the 65-percent of taxable income limitation related to percentage depletion deductions.

DESCRIPTION OF PROVISION

The limit on percentage depletion deductions to no more than 65 percent of the taxpayer's overall taxable income is suspended for taxable years beginning after December 31, 2001, and before January 1, 2007. The suspension of the 100-percent net-income limitation for marginal wells is extended an additional five years, through taxable years beginning before January 1, 2007.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

C. DEDUCTION FOR DELAY RENTAL PAYMENTS

(Sec. 303 of the Bill and Secs. 263 and 263A of the Code)

PRESENT LAW

Present law generally requires costs associated with inventory and property held for resale to be capitalized rather than currently deducted as they are incurred. (sec. 263). Oil and gas producers typically contract for mineral production in exchange for royalty payments. If mineral production is delayed, these contracts provide for "delay rental payments" as a condition of their extension. In proposed regulations issued in 2000, the Treasury Department took the position that the uniform capitalization rules of section 263A require delay rental payments to be capitalized.⁶¹

REASONS FOR CHANGE

The Committee believes that, in essence, a delay rental payment is a substitute, both in the eyes of the payor and the payee, for a royalty payment that would have been made had the property been brought into production. The Committee notes that a royalty payment is deductible currently and, therefore, believes that delay rental payments also should be deductible currently.

DESCRIPTION OF PROVISION

The provision allows delay rental payments incurred in connection with the development of oil or gas within the United States to be deducted currently.

EFFECTIVE DATE

The provision applies to delay rental payments paid or incurred in taxable years beginning after December 31, 2001. No inference is intended from the prospective effective date of this provision as to the proper treatment of pre-effective date delay rental payments.

⁶¹ 65 Fed. Reg. 6090 (2000).

D. ELECTION TO EXPENSE GEOLOGICAL AND GEOPHYSICAL EXPENDITURES

(Sec. 304 of the Bill and Sec. 263 of the Code)

PRESENT LAW

In general

Geological and geophysical expenditures are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. A key issue with respect to the tax treatment of such expenditures is whether or not they are capital in nature. Capital expenditures are not currently deductible as ordinary and necessary business expenses, but are allocated to the cost of the property.⁶²

Courts have held that geological and geophysical costs are capital, and therefore are allocable to the cost of the property⁶³ acquired or retained.⁶⁴ The costs attributable to such exploration are allocable to the cost of the property acquired or retained. As described further below, IRS administrative rulings have provided further guidance regarding the definition and proper tax treatment of geological and geophysical costs.

Revenue Ruling 77-188

In Revenue Ruling 77-188⁶⁵ (hereinafter referred to as the "1977 ruling"), the IRS provided guidance regarding the proper tax treatment of geological and geophysical costs. The ruling describes a typical geological and geophysical exploration program as containing the following elements:

- It is customary in the search for mineral producing properties for a taxpayer to conduct an exploration program in one or more identifiable project areas. Each project area encompasses a territory that the taxpayer determines can be explored advantageously in a single integrated operation. This determination is made after analyzing certain variables such as (1) the size and topography of the project area to be explored, (2) the existing information available with respect to the project area and nearby areas, and (3) the quantity of equipment, the number of personnel, and the amount of money available to conduct a reasonable exploration program over the project area.
- The taxpayer selects a specific project area from which geological and geophysical data are desired and conducts a reconnaissance-type survey utilizing various geological and geophysical exploration techniques. These techniques are designed to yield data

⁶² Under section 263, capital expenditures are defined generally as any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Treasury regulations define capital expenditures to include amounts paid or incurred (1) to add to the value, or substantially prolong the useful life, of property owned by the taxpayer or (2) to adapt property to a new or different use. Treas. Reg. sec. 1.263(a)-1(b).

⁶³ "Property" means an interest in a property as defined in section 614 of the Code, and includes an economic interest in a tract or parcel of land notwithstanding that a mineral deposit has not been established or proved at the time the costs are incurred.

⁶⁴ See, e.g., *Schermerhorn Oil Corporation v. Commissioner*, 46 B.T.A. 151 (1942). By contrast, section 617 of the Code permits a taxpayer to elect to deduct certain expenditures incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (but not oil and gas). These deductions are subject to recapture if the mine with respect to which the expenditures were incurred reaches the producing stage.

⁶⁵ 1977-1 C.B. 76.

that will afford a basis for identifying specific geological features with sufficient mineral potential to merit further exploration.

- Each separable, noncontiguous portion of the original project area in which such a specific geological feature is identified is a separate “area of interest.” The original project area is subdivided into as many small projects as there are areas of interest located and identified within the original project area. If the circumstances permit a detailed exploratory survey to be conducted without an initial reconnaissance-type survey, the project area and the area of interest will be coextensive.

- The taxpayer seeks to further define the geological features identified by the prior reconnaissance-type surveys by additional, more detailed, exploratory surveys conducted with respect to each area of interest. For this purpose, the taxpayer engages in more intensive geological and geophysical exploration employing methods that are designed to yield sufficiently accurate sub-surface data to afford a basis for a decision to acquire or retain properties within or adjacent to a particular area of interest or to abandon the entire area of interest as unworthy of development by mine or well.

The 1977 ruling provides that if, on the basis of data obtained from the preliminary geological and geophysical exploration operations, only one area of interest is located and identified within the original project area, then the entire expenditure for those exploratory operations is to be allocated to that one area of interest and thus capitalized into the depletable basis of that area of interest. On the other hand, if two or more areas of interest are located and identified within the original project area, the entire expenditure for the exploratory operations is to be allocated equally among the various areas of interest.

If no areas of interest are located and identified by the taxpayer within the original project area, then the 1977 ruling states that the entire amount of the geological and geophysical costs related to the exploration is deductible as a loss under section 165. The loss is claimed in the taxable year in which that particular project area is abandoned as a potential source of mineral production.

A taxpayer may acquire or retain a property within or adjacent to an area of interest, based on data obtained from a detailed survey that does not relate exclusively to any discrete property within a particular area of interest. Generally, under the 1977 ruling, the taxpayer allocates the entire amount of geological and geophysical costs to the acquired or retained property as a capital cost under section 263(a). If more than one property is acquired, it is proper to determine the amount of the geological and geophysical costs allocable to each such property by allocating the entire amount of the costs among the properties on the basis of comparative acreage.

If, however, no property is acquired or retained within or adjacent to that area of interest, the entire amount of the geological and geophysical costs allocable to the area of interest is deductible as a loss under section 165 for the taxable year in which such area of interest is abandoned as a potential source of mineral production.

In 1983, the IRS issued Revenue Ruling 83-105,⁶⁶ which elaborates on the positions set forth in the 1977 ruling by setting forth

⁶⁶ 1983-2 C.B. 51.

seven factual situations and applying the principles of the 1977 ruling to those situations. In addition, Revenue Ruling 83-105 explains what constitutes “abandonment as a potential source of mineral production.”

REASONS FOR CHANGE

The Committee believes that substantial simplification for taxpayers and significant gains in taxpayer compliance and reductions in administrative cost can be obtained by establishing the simple rule that all geological and geophysical costs can be deducted currently, regardless of the taxpayer’s determination of the suitability of the site or sites examined for future production.

DESCRIPTION OF PROVISION

The provision allows geological and geophysical costs incurred in connection with oil and gas exploration in the United States to be deducted currently.

EFFECTIVE DATE

The provision is effective for geological and geophysical costs paid or incurred in taxable years beginning after December 31, 2001.

E. ALLOW NET OPERATING LOSSES FROM OIL AND GAS PROPERTIES TO BE CARRIED BACK FOR UP TO FIVE YEARS

(Sec. 305 of the Bill and Sec. 172 of the Code)

PRESENT LAW

A net operating loss (“NOL”) generally is the amount by which business deductions of a taxpayer exceed business gross income. In general, an NOL may be carried back two years and carried forward 20 years to offset taxable income in such years. A carryback of an NOL results in the refund of Federal income tax for the carryback year. A carryforward of an NOL reduces Federal income tax for the carryforward year. Special NOL carryback rules apply to (1) casualty and theft losses of individual taxpayers, (2) Presidentially declared disasters for taxpayers engaged in a farming business or a small business, (3) real estate investment trusts, (4) specified liability losses, (5) excess interest losses, and (6) farm losses.

REASONS FOR CHANGE

The Committee is concerned that, while current oil and gas operations may be profitable, the highly volatile nature of oil and gas prices could quickly create economic hardships in the industry. The potential problem could be particularly acute in those communities in which a large percentage of jobs are related to the oil and gas industry. Thus, to help minimize the adverse effects of future price fluctuations, the Committee believes it is appropriate to extend the carryback period for net operating losses in the oil and gas industry.

DESCRIPTION OF PROVISION

The provision would provide a special five-year carryback for certain eligible oil and gas losses. The carryforward period would remain 20 years. An “eligible oil and gas loss” would be defined as the lesser of (1) the amount which would be the taxpayer’s NOL for the taxable year if only income and deductions attributable to operating mineral interests in oil and gas wells were taken into account, or (2) the amount of such net operating loss for such taxable year. In calculating the amount of a taxpayer’s NOL carrybacks, the portion of the NOL that would be attributable to an eligible oil and gas loss would be treated as a separate NOL and taken into account after the remaining portion of the NOL for the taxable year.

EFFECTIVE DATE

The provision applies to NOLs arising in taxable years beginning after December 31, 2001.

F. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NON-CONVENTIONAL SOURCE

(Sec. 306 of the Bill and Sec. 29 of the Code)

PRESENT LAW

Certain fuels produced from “non-conventional sources” and sold to unrelated parties are eligible for an income tax credit equal to \$3 (generally adjusted for inflation) per barrel or BTU oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States.

Qualified fuels include:

- (1) oil produced from shale and tar sands;
- (2) gas produced from geopressured brine, Devonian shale, coal seams, tight formations (“tight sands”), or biomass; and
- (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

In general, the credit is available only with respect to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit may be claimed for qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993 expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

REASONS FOR CHANGE

The committee concludes that the section 29 credit has brought forth oil and natural gas from domestic sources and that in the absence of these non-conventional sources the demand for imported fuels may have increased. To increase domestic sources of supply, the committee believes it is appropriate to extend the section 29

credit to help foster new domestic fuel sources. The committee is also concerned that, because of the higher extraction costs of these non-conventional sources, the expiration of existing section 29 benefits after 2002 could lead to the loss of needed domestic fuel production. Therefore, the committee believes it is appropriate to extend the credit for certain fuels produced from existing wells or facilities.

Lastly, the committee recognizes that the world price of oil as the nation enters the 21st century has not risen to levels forecast in 1978. Therefore, the committee believes it is appropriate to restart the section 29 credit at a level lower than that currently available to existing production.

EXPLANATION OF PROVISION

The bill permits taxpayers to claim the sec. 29 credit for production of certain non-conventional fuels produced at wells placed in service after the date of enactment and before January 1, 2007. Qualifying fuels are oil from shale or tar sands, and gas from geopressured brine, Devonian shale, coal seams or a tight formation. The value of the credit is \$3.00 for production in 2001 and 2002 and is indexed for inflation commencing with the credit amount for 2003. The credit may be claimed for production from the well for each of the first four years of production, but not for any production occurring after December 31, 2009.

Production from wells and facilities that currently qualifies for the section 29 credit would not be affected by the bill prior to the scheduled expiration of the section 29 credit for production from such well or facility. However, the bill further permits production from certain existing wells (any well drilled after December 31, 1979 and before January 1, 1993) to claim a credit equal to the newly, re-indexed value of \$3.00 for production in 2003 through 2006.

The provision also permits landfill gas sold to a third party from facilities placed in service after June 30, 1998 and before January 1, 2007 to be eligible for the taxpayer to claim five years of credit from the later of the date of enactment or the date the facility is placed in service. The amount of credit is \$3.00 per barrel equivalent in 2001 and 2002 and is indexed for inflation commencing with the credit amount for 2003. That is, the value of the credit for 2003 will reflect the first indexing adjustment. In the case of a landfill subject to the Environmental Protection Agency's 1996 New Source Performance Standards/Emissions Guidelines the amount of credit is \$2.00 per barrel equivalent in 2001 and 2002 and is indexed for inflation commencing with the credit amount for 2003.

Under the proposal, the taxpayer may not claim any credit for production in excess of a daily average of 200,000 cubic feet of gas (or barrel of oil equivalent) from a qualifying well or facility.⁶⁷

EFFECTIVE DATE

The proposal would apply to fuel sold from qualifying wells and facilities after the date of enactment.

⁶⁷The daily average is to be computed as total production divided by the total number of days the well or facility was in production during the year.

G. ALLOW BUSINESS ENERGY CREDITS AGAINST THE ALTERNATIVE MINIMUM TAX

(Sec. 307 of the Bill and Sec. 38 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals and corporations in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, business credits may not exceed the excess of the regular tax liability over the tentative minimum tax.

REASONS FOR CHANGE

The Committee believes that the energy credits should be utilized by offsetting both the regular tax and the alternative minimum tax.

EXPLANATION OF PROVISION

The provision makes the minimum tax limitation inapplicable to the business energy credits added by the bill. These credits include the credit for efficient appliances (sec. 45G), the credit for construction of new energy efficient homes (sec. 45H), the environmental tax credit (sec. 45I), the credit for oil and gas production from marginal wells (sec. 45J), and the credit for production from qualifying advanced clean coal technology (sec. 45K).

EFFECTIVE DATE

The provision applies to taxable years ending after the date of enactment.

H. REPEAL ALTERNATIVE MINIMUM TAX INTANGIBLE DRILLING COSTS ("IDCs") PREFERENCE FOR OIL AND GAS PRODUCTION

(Sec. 308 of the Bill and Sec. 57 of the Code)

PRESENT LAW

Taxpayers who pay or incur intangible drilling or development costs ("IDCs") in the development of domestic oil or gas production may elect to either expense or capitalize these amounts. If an election to expense IDCs is made, the taxpayer deducts the amount of the IDCs as an expense in the taxable year the cost is paid or incurred.

The difference between the amount of a taxpayer's IDC deduction and the amount which would have been currently deductible had IDCs been capitalized and recovered over a 10-year period is an item of tax preference for the alternative minimum tax ("AMT") to the extent that this amount exceeds 65 percent of the taxpayer's net income from oil and gas properties for the taxable year. This preference applies to taxpayers other than integrated oil companies only to the extent that the failure to apply the preference would result in a reduction of the taxpayer's alternative minimum taxable income by more than 40 percent.

REASONS FOR CHANGE

The Committee wishes to increase the effectiveness of the IDC expensing provision by repealing the AMT preference for taxpayers other than integrated oil companies.

EXPLANATION OF PROVISION

The provision repeals the AMT preference for IDCs for oil and gas wells for taxpayers other than integrated oil companies.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2001, and beginning before January 1, 2005.

I. ALLOW ENHANCED OIL RECOVERY CREDIT AGAINST THE ALTERNATIVE MINIMUM TAX

(Sec. 309 of the Bill and Sec. 38 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals and corporations in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, business credits may not exceed the excess of the regular tax liability over the tentative minimum tax. One of these credits is the enhanced oil recovery credit (sec. 43).

REASONS FOR CHANGE

The Committee believes that the enhanced oil recovery credit should be utilized by offsetting both the regular tax and the alternative minimum tax.

EXPLANATION OF PROVISION

The provision repeals the minimum tax limitation on the enhanced oil recovery credit.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2001, and beginning before January 1, 2005.

J. EXTENSION OF TAX INCENTIVES FOR ENERGY-RELATED BUSINESS ON INDIAN RESERVATIONS

(Sec. 310 of the Bill and Secs. 45A and 168(j) of the Code)

PRESENT LAW

Present law includes the following tax incentives for businesses located within Indian reservations.

Accelerated depreciation

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, deprecia-

tion deductions under section 168(j) will be determined using the following recovery periods:

	<i>Years</i>
3-year property	2
5-year property	3
7-year property	4
10-year property	6
15-year property	9
20-year property	12
Nonresidential real property	22

“Qualified Indian reservation property” eligible for accelerated depreciation includes property which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not used or located outside the reservation on a regular basis, (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and (4) described in the recovery-period table above. In addition, property is not “qualified Indian reservation property” if it is placed in service for purposes of conducting gaming activities. Certain “qualified infrastructure property” may be eligible for the accelerated depreciation even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities).

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. The accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before December 31, 2003.

Indian employment credit

In general, a credit against income tax liability is allowed to employers for the first \$20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees (sec. 45A). The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer’s current-year qualified wages and qualified employee health insurance costs (up to \$20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.

Qualified wages means wages paid or incurred by an employer for services performed by a qualified employee. A qualified employee means any employee who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. An employee will not be treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during

the taxable year exceeds an amount determined at an annual rate of \$30,000 (adjusted for inflation after 1993).

The wage credit is available for wages paid or incurred on or after January 1, 1994, in taxable years that begin before December 31, 2003.

REASONS FOR CHANGE

The Committee believes that extending the accelerated depreciation and wage credit tax incentives for energy production and transmission activities within Indian reservations will both increase the supply of energy as well as expand business and employment opportunities in these areas.

EXPLANATION OF PROVISION

Accelerated depreciation

The provision extends the accelerated depreciation incentive for three years (to property placed in service before January 1, 2007), but only with respect to property that is part of a facility for (1) the generation or transmission of electricity (including from any qualified energy resource), (2) an oil or gas well, (3) the transmission or refining of oil or gas, or (4) the production of any qualified fuel (as defined in section 29(c)).

Indian employment credit

The provision extends the Indian employment credit incentive for three years (to taxable years beginning before January 1, 2007), but only in the case of wages paid for services performed at a facility for (1) the generation or transmission of electricity (including from any qualified energy resource), (2) an oil or gas well, (3) the transmission or refining of oil or gas, or (4) the production of any qualified fuel (as defined in section 29(c)).

EFFECTIVE DATE

The provisions are effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 2511.

MOTION TO REPORT THE BILL

The bill, H.R. 2511, as amended, was ordered favorably reported by a rollcall vote of 24 yeas to 17 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas	X	.....	.....	Mr. Rangel .....	.....	X	.....
Mr. Crane	X	.....	.....	Mr. Stark .....	.....	X	.....
Mr. Shaw	X	.....	.....	Mr. Matsui .....	.....	X	.....
Mrs. Johnson	X	.....	.....	Mr. Coyne .....	.....	X	.....
Mr. Houghton	X	.....	.....	Mr. Levin .....	.....	X	.....
Mr. Herger	X	.....	.....	Mr. Cardin .....	.....	X	.....
Mr. McCreery	X	.....	.....	Mr. McDermott .....	.....	X	.....
Mr. Camp	X	.....	.....	Mr. Kleczka .....	.....	X	.....

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Ramstad	X	.....	.....	Mr. Lewis (GA) .....	.....	X	.....
Mr. Nussle	X	.....	.....	Mr. Neal .....	.....	X	.....
Mr. Johnson	X	.....	.....	Mr. McNulty .....	.....	X	.....
Ms. Dunn	X	.....	.....	Mr. Jefferson .....	.....	X	.....
Mr. Collins	X	.....	.....	Mr. Tanner .....	.....	X	.....
Mr. Portman	X	.....	.....	Mr. Becerra .....	.....	X	.....
Mr. English	X	.....	.....	Mrs. Thurman .....	.....	X	.....
Mr. Watkins	X	.....	.....	Mr. Doggett .....	.....	X	.....
Mr. Hayworth	X	.....	.....	Mr. Pomeroy .....	.....	X	.....
Mr. Weller	X	.....	.....	.....	.....	.....	.....
Mr. Hulshof	X	.....	.....	.....	.....	.....	.....
Mr. McClinnis	X	.....	.....	.....	.....	.....	.....
Mr. Lewis (KY)	X	.....	.....	.....	.....	.....	.....
Mr. Foley	X	.....	.....	.....	.....	.....	.....
Mr. Brady	X	.....	.....	.....	.....	.....	.....
Mr. Ryan	X	.....	.....	.....	.....	.....	.....

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the Chairman's amendment in the nature of a substitute.

An amendment by Mr. McDermott, which would add a new section relating to credits to holders of residential solar energy bonds, was defeated by a rollcall vote of 15 yeas to 25 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas	X	.....	Mr. Rangel	X	.....	.....
Mr. Crane	X	.....	Mr. Stark	X	.....	.....
Mr. Shaw	X	.....	Mr. Matsui	X	.....	.....
Mrs. Johnson	X	.....	Mr. Coyne	X	.....	.....
Mr. Houghton	X	.....	Mr. Levin	X	.....	.....
Mr. Herger	X	.....	Mr. Cardin	X	.....	.....
Mr. McCrery	X	.....	Mr. McDermott	X	.....	.....
Mr. Camp	X	.....	Mr. Kleczka	X	.....	.....
Mr. Ramstad	X	.....	Mr. Lewis (GA)	X	.....	.....
Mr. Nussle	X	.....	Mr. Neal	X	.....	.....
Mr. Johnson	X	.....	Mr. McNulty	X	.....	.....
Ms. Dunn	X	.....	Mr. Jefferson	X	.....	.....
Mr. Collins	X	.....	Mr. Tanner .....	.....	X	.....
Mr. Portman	Mr. Becerra	X	.....	.....
Mr. English	X	.....	Mrs. Thurman	X	.....	.....
Mr. Watkins	X	.....	Mr. Doggett	X	.....	.....
Mr. Hayworth	X	.....	Mr. Pomeroy .....	.....	X	.....
Mr. Weller	X	.....	.....	.....	.....	.....
Mr. Hulshof	X	.....	.....	.....	.....	.....
Mr. McClinnis	X	.....	.....	.....	.....	.....
Mr. Lewis (KY)	X	.....	.....	.....	.....	.....
Mr. Foley	X	.....	.....	.....	.....	.....
Mr. Brady	X	.....	.....	.....	.....	.....
Mr. Ryan	X	.....	.....	.....	.....	.....

An amendment by Mrs. Thurman, which would make the provisions in the bill contingent upon sufficient non-Social Security, non-Medicare surpluses, was defeated by a rollcall vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas	X	.....	Mr. Rangel	X	.....	.....
Mr. Crane	X	.....	Mr. Stark	X	.....	.....
Mr. Shaw	X	.....	Mr. Matsui	X	.....	.....
Mrs. Johnson	X	.....	Mr. Coyne	X	.....	.....
Mr. Houghton	X	.....	.....	Mr. Levin	X	.....	.....

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Herger		X	.....	Mr. Cardin	X	.....	.....
Mr. McCrery		X	.....	Mr. McDermott	X	.....	.....
Mr. Camp		X	.....	Mr. Kleczka	X	.....	.....
Mr. Ramstad		X	.....	Mr. Lewis (GA)	X	.....	.....
Mr. Nussle		X	.....	Mr. Neal	X	.....	.....
Mr. Johnson		X	.....	Mr. McNulty	X	.....	.....
Ms. Dunn		X	.....	Mr. Jefferson .....		.....	.....
Mr. Collins		X	.....	Mr. Tanner	X	.....	.....
Mr. Portman		X	.....	Mr. Becerra	X	.....	.....
Mr. English		X	.....	Mrs. Thurman	X	.....	.....
Mr. Watkins		X	.....	Mr. Doggett	X	.....	.....
Mr. Hayworth		X	.....	Mr. Pomeroy	X	.....	.....
Mr. Weller		X	.....	.....		.....	.....
Mr. Hulshof		X	.....	.....		.....	.....
Mr. McClinnis		X	.....	.....		.....	.....
Mr. Lewis (KY)		X	.....	.....		.....	.....
Mr. Foley		X	.....	.....		.....	.....
Mr. Brady		X	.....	.....		.....	.....
Mr. Ryan		X	.....	.....		.....	.....

A substitute amendment for the entire bill by Mr. Rangel, was defeated by a rollcall vote of 15 yeas to 25 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas		X	.....	Mr. Rangel	X	.....	.....
Mr. Crane		X	.....	Mr. Stark .....		.....	.....
Mr. Shaw		X	.....	Mr. Matsui	X	.....	.....
Mrs. Johnson		X	.....	Mr. Coyne	X	.....	.....
Mr. Houghton		X	.....	Mr. Levin	X	.....	.....
Mr. Herger		X	.....	Mr. Cardin	X	.....	.....
Mr. McCrery		X	.....	Mr. McDermott	X	.....	.....
Mr. Camp		X	.....	Mr. Kleczka	X	.....	.....
Mr. Ramstad		X	.....	Mr. Lewis (GA)	X	.....	.....
Mr. Nussle		X	.....	Mr. Neal	X	.....	.....
Mr. Johnson		X	.....	Mr. McNulty	X	.....	.....
Ms. Dunn		X	.....	Mr. Jefferson	X	.....	.....
Mr. Collins		X	.....	Mr. Tanner	X	.....	.....
Mr. Portman		X	.....	Mr. Becerra	X	.....	.....
Mr. English		X	.....	Mrs. Thurman	X	.....	.....
Mr. Watkins		X	.....	Mr. Doggett		X	.....
Mr. Hayworth		X	.....	Mr. Pomeroy	X	.....	.....
Mr. Weller		X	.....	.....		.....	.....
Mr. Hulshof		X	.....	.....		.....	.....
Mr. McClinnis		X	.....	.....		.....	.....
Mr. Lewis (KY)		X	.....	.....		.....	.....
Mr. Foley		X	.....	.....		.....	.....
Mr. Brady		X	.....	.....		.....	.....
Mr. Ryan		X	.....	.....		.....	.....

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 2511 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2001–2006:

**ESTIMATED BUDGET EFFECTS OF H.R. 2511,
THE "ENERGY TAX POLICY ACT OF 2001"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS**

Fiscal Years 2002 - 2006

(Millions of Dollars)

Provision	Effective	2002	2003	2004	2005	2006	2002-06
Conservation Provisions							
A. 15% Credit for Residential Solar Hot Water (through 12/31/06) and Photovoltaics (through 12/31/08)	tyba 12/31/01	-2	-9	-11	-14	-19	-56
B. Extend (facilities placed in service through 12/31/06) and Modify the Section 45 Credit for Producing Electricity From Certain Sources	eslqfa DOE	-77	-164	-224	-282	-337	-1,085
C. Tax Incentives for Fuel Cells:							
1. Credit for non-business installation of qualifying fuel cells (through 12/31/06)	epola 12/31/01	-2	-15	-32	-58	-87	-195
2. Credit for business installation of qualifying fuel cells (through 12/31/06)	epola 12/31/01	-2	-7	-16	-30	-47	-102
D. Modifications and Extension of Provisions Relating to Electric Vehicles, Clean-Fuel Vehicles, and Clean-Fuel Vehicles Refueling Property:							
1. Alternative motor vehicle credit (fuel cells before 1/1/12; others before 1/1/08)	[1]	-35	-183	-244	-375	-419	-1,257
2. Extension of deduction for certain refueling property (placed in service before 1/1/08)	DOE	---	---	---	-5	-8	-13
3. Modification of credit for qualified electric vehicles (purchased before 1/1/08)	[1]	-12	-21	-36	-55	-73	-197
E. Tax Credit for Energy Efficient Appliances - Credit to producers for energy efficient refrigerators and washing machines	[2]	-50	-57	-59	-53	-39	-257
F. Credit for Energy Efficiency Improvements to Existing Homes and Business Credit for Construction of New Energy Efficient Homes - credit up to \$2,000 for installation of qualifying insulation, and windows and doors in newly constructed and existing residential property, and heating and cooling systems in newly constructed residential property	tyba 12/31/01 & ppsa 1/1/07	-84	-403	-319	-308	-276	-1,390

Provision		Effective	2002	2003	2004	2005	2006	2002-06
G.	Allowance of Deduction for Certain Energy Efficient Commercial Building Property	tyba 12/31/01 & ppisd 1/1/07	-75	-75	-76	-80	-81	-387
H.	Allowance of Deduction for New and Retrofitted Energy Management Devices; Three-Year Applicable Recovery Period for Depreciation of Qualified New Energy Management Devices	ppisa DOE tyba 12/31/01 & episa 12/31/01 & episd 1/1/07	-11	-11	-19	-25	-29	-95
I.	Energy Credit for Combined Heat and Power System Property		-6	-37	-65	-72	-76	-257
J.	Allow Nonbusiness Energy Credits Against the Alternative Minimum Tax	tyba 12/31/01	-1	-6	-11	-18	-27	-62
K.	Repeal Certain Excise Taxes on Railroad Diesel Fuel and Inland Waterway Fuel - reduce excise taxes by 1 cent/gallon in 2001 through 2004, 2 cents/gallon in 2005 and 2006, 3 cents/gallon in 2007 and 2008, 4 cents/gallon in 2009, and 4.3 cents/gallon thereafter							
L.	Bitu-Based Highway Excise Tax Rate for Diesel Fuel Blended with Water	10/1/01	-32	-34	-35	-63	-75	-240
M.	Investment and Production Credits for Clean Coal Technology (through 12/31/11)	Ira 9/30/01	-4	-115	-312	-405	-441	-1,279
Total of Conservation Provisions			-393	-1,137	-1,459	-1,843	-2,034	-6,872
Reliability Provisions								
A.	Natural Gas Gathering Pipelines Treated as Seven-Year Property	ppisa DOE						
B.	Gas Distribution Pipelines Treated as Ten-Year Property	ppisa DOE	-65	-131	-205	-265	-317	-984
C.	Petroleum Refining Property Treated as Seven-Year Property	ppisa DOE	-43	-87	-128	-145	-164	-568
D.	Same Depreciation Methods for the Gas and Oil Property Listed Above for Regular and Minimum Tax	ppisa DOE	-30	-44	-47	-38	-21	-179
E.	Expensing of Capital Costs Incurred and Credit for Production in Compliance with Environmental Protection Agency Sulfur Regulations for Small Refiners	epola DOE					-8	-8
F.	Determination of Small Refiner Exception to Oil Depletion Deduction - modify definition of independent refiner from daily maximum run less than 50,000 barrels to average daily run less than 75,000 barrels	tyba 12/31/01	-14	-14	-14	-14	-15	-71
G.	Modifications to Rules Governing Issuance of Tax-Exempt Bonds for Public Power Facilities	DOE	-17	-101	-177	-231	-268	-793

Provision	Effective	2002	2003	2004	2005	2006	2007-06
H. Rollover and Spin-Off Relief for Certain Dispositions of Transmission Property Before January 1, 2009, to Implement FERC Restructuring Policy							
I. Modification to Special Rules for Nuclear Decommissioning Costs - transfer of non-qualified funds; eliminate cost of service requirement; permit full funding in qualified fund, and clarify treatment of fund transfers	[3]	-507	-656	-758	-782	-151	-2,854
J. Treatment of Certain Income of Electric Cooperatives	tyba 2001	-63	-127	-156	-166	-185	-697
K. Repeal of Requirement That Certain Terminals Offer Both Dyed and Undyed Diesel Fuel and Kerosene as a Condition of Registration	tyba DOE	-6	-12	-15	-17	-19	-70
L. Exempt Certain Prepayments for Natural Gas From Tax-Exempt Bond Arbitrage Rules - require 85% of the gas be sold within the State for bonds issued after the date of enactment	DOE						
		----- Negligible Revenue Effect -----					
Total of Reliability Provisions	generally DOE	-15	-40	-55	-64	-77	-251
		-760	-1,212	-1,555	-1,722	-1,225	-6,475
Production Provisions							
A. Tax Credit for Oil and Gas Production From Marginal Wells	pi tyba 12/31/01						
B. Temporary Suspension of Limitation Based on 65-Percent of Taxable Income (through 12/31/06)	tyba 12/31/01	-117	-178	-177	-179	-183	-833
C. Extension of Suspension of Taxable Income Limit With Respect to Marginal Production (through 12/31/06)	tyba 12/31/01	-27	-41	-41	-43	-44	-196
D. Deduction for Delay Rental Payments	apoll tyba 12/31/01	-75	-117	-117	-118	-119	-547
E. Election to Expense Geological and Geophysical Expenditures	cpoll tyba 12/31/01	-169	-192	-111	-81	-73	-826
F. Allow Net Operating Losses From Oil and Gas Properties to be Carried Back for Up to Five Years	NOLI tyba 12/31/01	-58	-85	-78	-88	-114	-423
G. Extension and Modification of Credit for Producing Fuel From a Non-Conventional Source (placed in service through 12/31/05)	lsldfa DOE	-44	-161	-298	-447	-587	-1,538
H. Allow Certain Business Energy Credits Against the Alternative Minimum Tax	tyea DOE	-32	-174	-288	-214	-86	-754
I. Repeal Alternative Minimum Tax Intangible Drilling Costs ("IDC") Preference for Oil and Gas Production	tyba 12/31/01 & tybb 1/1/05	-21	-28	-25	[4]	11	-62
J. Allow Enhanced Oil Recovery Credit Against the Alternative Minimum Tax	tyba 12/31/01 & tybb 1/1/05	-34	-53	-55	-14	8	-149

Provision	Effective	2002	2003	2004	2005	2006	2002-06
K. Extension of Accelerated Depreciation and Wage Credit Benefits for Energy-Related Business on Indian Reservations (through 12/31/06)	DOE	1	5	-25	-89	-127	-234
Total of Production Provisions		-576	-1,024	-1,195	-1,273	-1,294	-5,360
NET TOTAL		-1,729	-3,373	-4,209	-4,838	-4,553	-18,707

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be October 1, 2001.

Legend for "Effective" column:

apoi = amounts paid or incurred in
 opoi = costs paid or incurred in
 DOE = date of enactment
 epola = expenses paid or incurred after
 episo = equipment placed in service after
 episo = equipment placed in service before
 esqia = electricity sold from qualifying facilities after
 tra = fuels removed after

fsola = fuel sold from qualifying facilities after
 NOLA = net operating losses for
 pi = production in
 ppiso = property placed in service after
 ppiso = property placed in service before
 tyoa = taxable years beginning after
 tyob = taxable years beginning before
 tyea = taxable years ending after

- [1] Effective for property placed in service after December 31, 2001, in taxable years ending after December 31, 2001.
 [2] Effective for taxable years beginning after the date of enactment and property produced before January 1, 2006 (January 1, 2004, in the case of refrigerators that only meet the 10-percent credit standard).
 [3] Effective for transactions occurring after and distributions occurring after the date of enactment and before January 1, 2009.
 [4] Loss of less than \$500,000.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue reducing income tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 2001.

Hon. WILLIAM "BILL" M. THOMAS,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2511, the Energy Tax Policy Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Erin Whitaker.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2511—Energy Tax Policy Act of 2001

Summary: H.R. 2511 would amend numerous provisions of tax law relating to energy. Provisions would enhance and create credits for the use and development of energy-efficient technologies, amend tax rules to provide greater recovery of assets and credits for businesses that provide energy, and enhance and create credits and deductions for the production of oil, gas, and other types of fuel. Provisions of the act would generally take effect in 2002, but some provisions would take effect on different dates, and some provisions would expire during the 2002–2011 period.

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that H.R. 2511 would decrease governmental receipts by about \$1.7 billion in 2002, by \$18.7 billion over the 2002–2006 period, and by \$33.5 billion over the 2002–2011 period. Since the bill would affect receipts, pay-as-you-go procedures would apply. H.R. 2511 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2511 is shown in the following table. All estimates were provided by JCT.

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN REVENUES					
Estimated Revenues	– 1,729	– 3,373	– 4,209	– 4,838	– 4,553

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays						Not applicable					
Changes in receipts	0	– 1,729	– 3,373	– 4,209	– 4,838	– 4,553	– 4,057	– 3,244	– 2,680	– 2,422	– 2,416

Intergovernmental and private-sector impact: H.R. 2511 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Revenues: Erin Whitaker; impact on state, local, and tribal governments: Elyse Goldman; impact on the private sector: Paige Piper/Bach.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on taxpayers that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have “widespread applicability” to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter A—Determination of Tax Liability

* * * * *

PART IV—CREDITS AGAINST TAX

* * * * *

Subpart A—Nonrefundable Personal Credits

* * * * *

Sec. 25B. Elective deferrals and IRA contributions by certain individuals.

Sec. 25C. Residential solar energy property.

Sec. 25D. Nonbusiness qualified stationary fuel cell powerplant.

Sec. 25E. Energy efficiency improvements to existing homes.

* * * * *

SEC. 24. CHILD TAX CREDIT.

(a) * * *

(b) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

(1) * * *

* * * * *

(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section and sections 23 [and 25B], 25B, 25C, 25D, and 25E) and section 27 for the taxable year.

* * * * *

SEC. 25. INTEREST ON CERTAIN HOME MORTGAGES.

(a) * * *

* * * * *

(e) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

(1) CARRYFORWARD OF UNUSED CREDIT.—

(A) * * *

* * * * *

(C) APPLICABLE TAX LIMIT.—For purposes of this paragraph, the term “applicable tax limit” means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25B, 25C, 25D, and 25E and 1400C) .

* * * * *

SEC. 25B. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS.

(a) * * *

* * * * *

(g) **LIMITATION BASED ON AMOUNT OF TAX.**—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(1) * * *

(2) the sum of the credits allowable under this subpart (other than this section and **[section 23]** *sections 23, 25C, 25D, and 25E*) and section 27 for the taxable year.

(g) **TERMINATION.**—This section shall not apply to taxable years beginning after December 31, 2006.

SEC. 25C. RESIDENTIAL SOLAR ENERGY PROPERTY.

(a) **ALLOWANCE OF CREDIT.**—*In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—*

(1) *15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year, and*

(2) *15 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year.*

(b) **LIMITATIONS.**—

(1) **MAXIMUM CREDIT.**—*The credit allowed under subsection (a) shall not exceed—*

(A) *\$2,000 for each system of property described in subsection (c)(1), and*

(B) *\$2,000 for each system of property described in subsection (c)(2).*

(2) **SAFETY CERTIFICATIONS.**—*No credit shall be allowed under this section for an item of property unless—*

(A) *in the case of solar water heating equipment, such equipment is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed, and*

(B) *in the case of a photovoltaic system, such system meets appropriate fire and electric code requirements.*

(3) **LIMITATION BASED ON AMOUNT OF TAX.**—*The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—*

(A) *the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over*

(B) *the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 25E) and section 27 for the taxable year.*

(c) **DEFINITIONS.**—*For purposes of this section—*

(1) **QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.**—*The term “qualified solar water heating property expenditure” means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun.*

(2) **QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.**—*The term “qualified photovoltaic property expenditure” means an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit.*

(3) **SOLAR PANELS.**—*No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2)*

solely because it constitutes a structural component of the structure on which it is installed.

(4) **LABOR COSTS.**—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1) or (2) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

(5) **SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.**—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

(d) **SPECIAL RULES.**—

(1) **DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.**—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

(A) The amount of the credit allowable under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

(B) There shall be allowable with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

(2) **TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.**—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(3) **CONDOMINIUMS.**—

(A) **IN GENERAL.**—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

(B) **CONDOMINIUM MANAGEMENT ASSOCIATION.**—For purposes of this paragraph, the term “condominium management association” means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(4) **ALLOCATION IN CERTAIN CASES.**—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

(5) *WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

(B) *EXPENDITURES PART OF BUILDING CONSTRUCTION.*—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

(C) *AMOUNT.*—The amount of any expenditure shall be the cost thereof.

(6) *PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.*—

For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken in to account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(A)).

(e) *BASIS ADJUSTMENTS.*—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) *TERMINATION.*—The credit allowed under this section shall not apply to taxable years beginning after December 31, 2006 (December 31, 2008, with respect to qualified photovoltaic property expenditures).

SEC. 25D. NONBUSINESS QUALIFIED STATIONARY FUEL CELL POWER-PLANT.

(a) *IN GENERAL.*—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the qualified stationary fuel cell powerplant expenditures which are paid or incurred during such year.

(b) *LIMITATIONS.*—

(1) *IN GENERAL.*—The credit allowed under subsection (a) for the taxable year and all prior taxable years shall not exceed \$1,000 for each kilowatt of capacity.

(2) *LIMITATION BASED ON AMOUNT OF TAX.*—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section and sections 23 and 25E) and section 27 for the taxable year.

(c) *QUALIFIED STATIONARY FUEL CELL POWERPLANT EXPENDITURES.*—For purposes of this section, the term “qualified stationary fuel cell powerplant expenditures” means expenditures by the taxpayer for any qualified stationary fuel cell powerplant (as defined in section 48(a)(4))—

(1) which meets the requirements of subparagraphs (B) and (D) of section 48(a)(3), and

(2) which is installed on or in connection with a dwelling unit—

(A) which is located in the United States, and

(B) which is used by the taxpayer as a residence.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

(d) *SPECIAL RULES.*—For purposes of this section, rules similar to the rules of section 25C(d) shall apply.

(e) *BASIS ADJUSTMENTS.*—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) *TERMINATION.*—This section shall not apply to any expenditure made after December 31, 2006.

SEC. 25E. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) *ALLOWANCE OF CREDIT.*—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

(b) *LIMITATIONS.*—

(1) *MAXIMUM CREDIT.*—The credit allowed by this section with respect to a dwelling shall not exceed \$2,000.

(2) *PRIOR CREDIT AMOUNTS FOR TAXPAYER ON SAME DWELLING TAKEN INTO ACCOUNT.*—If a credit was allowed to the taxpayer under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of \$2,000 reduced by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all prior taxable years.

(3) *LIMITATION BASED ON AMOUNT OF TAX.*—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section and section 23) and section 27 for the taxable year.

(c) *CARRYFORWARD OF UNUSED CREDIT.*—If the credit allowable under subsection (a) exceeds the limitation imposed by subsection (b)(3) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(d) *QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.*—For purposes of this section, the term “qualified energy efficiency improvements” means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 1998 International Energy Conservation Code, if—

(1) such component is installed in or on a dwelling—

(A) located in the United States, and

(B) owned and used by the taxpayer as the taxpayer’s principal residence (within the meaning of section 121),

(2) the original use of such component commences with the taxpayer, and

(3) *such component reasonably can be expected to remain in use for at least 5 years.*

If the aggregate cost of such components with respect to any dwelling exceeds \$1,000, such components shall be treated as qualified energy efficiency improvements only if such components are also certified in accordance with subsection (e) as meeting such criteria.

(e) *CERTIFICATION.—The certification described in subsection (d) shall be—*

(1) *determined on the basis of the technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency, based upon energy use or building envelope component performance, for the energy efficient building envelope component,*

(2) *provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider who is accredited by or otherwise authorized to use approved energy performance measurement methods by the Home Energy Ratings Systems Council or the National Association of State Energy Officials, and*

(3) *made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components installed and their respective energy efficiency levels.*

(f) *DEFINITIONS AND SPECIAL RULES.—*

(1) *TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.*

(2) *CONDOMINIUMS.—*

(A) *IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having paid his proportionate share of the cost of qualified energy efficiency improvements made by such association.*

(B) *CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term “condominium management association” means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.*

(3) *BUILDING ENVELOPE COMPONENT.—The term “building envelope component” means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.*

(4) *MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term “dwelling” includes a manufactured home*

which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

(g) *BASIS ADJUSTMENT.*—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(h) *APPLICATION OF SECTION.*—This section shall apply to qualified energy efficiency improvements installed after December 31, 2001 and before January 1, 2007.

SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

(a) **LIMITATION BASE ON AMOUNT OF TAX.**—

(1) **IN GENERAL.**—The aggregate amount of credits allowed by this subpart (other than sections 23, 24, [and 25B] 25B, 25C, 25D, and 25E) for the taxable year shall not exceed the excess (if any) of—

(A) * * *

* * * *

Subpart B—Foreign Tax Credit, Etc.

Sec. 27. Tax of foreign countries and possessions of the United States; possession tax credit.

* * * *

Sec. 30. Credit for qualified *battery* electric vehicles.

Sec. 30A. Puerto Rico economic activity credit.

Sec. 30B. *Alternative motor vehicle credit.*

* * * *

SEC. 29. CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) **ALLOWANCE OF CREDIT.**—[There] *At the election of the taxpayer, there* shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to—

(1) * * *

* * * *

(h) **EXTENSION FOR OTHER FACILITIES.**—

(1) **EXTENSION FOR OIL AND CERTAIN GAS.**—*In the case of a well for producing qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1)—*

(A) **APPLICATION OF CREDIT FOR NEW WELLS.**—*Notwithstanding subsection (f), this section shall apply with respect to such fuels—*

(i) which are produced from a well drilled after the date of the enactment of this subsection and before January 1, 2007, and

(ii) which are sold not later than the close of the 4-year period beginning on the date that such well is drilled, or, if earlier, January 1, 2010.

(B) **EXTENSION OF CREDIT FOR OLD WELLS.**—*Subsection (f)(2) shall be applied by substituting “2007” for “2003” with respect to wells described in subsection (f)(1)(A) with respect to such fuels.*

(2) **EXTENSION FOR FACILITIES PRODUCING QUALIFIED FUEL FROM LANDFILL GAS.**—

(A) *IN GENERAL.*—In the case of a facility for producing qualified fuel from landfill gas which was placed in service after June 30, 1998, and before January 1, 2007, this section shall apply to fuel produced at such facility during the 5-year period beginning on the later of—

- (i) the date such facility was placed in service, or
- (ii) the date of the enactment of this subsection.

(B) *REDUCTION OF CREDIT FOR CERTAIN LANDFILL FACILITIES.*—In the case of a facility to which paragraph (1) applies and which is subject to the 1996 New Source Performance Standards/Emissions Guidelines of the Environmental Protection Agency, subsection (a)(1) shall be applied by substituting “\$2” for “\$3”.

(3) *SPECIAL RULES.*—In determining the amount of credit allowable under this section solely by reason of this subsection—

(A) *DAILY LIMIT.*—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

(B) *EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT.*—In the case of fuels sold during 2001 and 2002, the dollar amount applicable under subsection (a)(1) shall be \$3 (without regard to subsection (b)(2)). In the case of fuels sold after 2002, subparagraph (B) of subsection (d)(2) shall be applied by substituting “2002” for “1979”.

SEC. 30. CREDIT FOR QUALIFIED BATTERY ELECTRIC VEHICLES.

(a) *ALLOWANCE OF CREDIT.*—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to [10 percent of] the cost of any qualified battery electric vehicle placed in service by the taxpayer during the taxable year.

(b) *LIMITATIONS.*—

[(1) *LIMITATION PER VEHICLE.*—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed \$4,000.

[(2) *PHASEOUT.*—In the case of any qualified electric vehicle placed in service after December 31, 2001, the credit otherwise allowable under subsection (a) (determined after the application of paragraph (1)) shall be reduced by—

[(A) 25 percent in the case of property placed in service in calendar year 2002,

[(B) 50 percent in the case of property placed in service in calendar year 2003, and

[(C) 75 percent in the case of property placed in service in calendar year 2004.]

(1) *LIMITATION ACCORDING TO TYPE OF VEHICLE.*—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed the greatest of the following amounts applicable to such vehicle:

(A) In the case of a vehicle which conforms to the Motor Vehicle Safety Standard 500 prescribed by the Secretary of Transportation, the lesser of—

- (i) 10 percent of the manufacturer's suggested retail price of the vehicle, or
- (ii) \$4,000.

(B) In the case of a vehicle not described in subparagraph (A) with a gross vehicle weight rating not exceeding 8,500 pounds—

- (i) \$4,000, or
- (ii) \$5,000, if such vehicle is—

(I) capable of a driving range of at least 70 miles on a single charge of the vehicle's rechargeable batteries and measured pursuant to the urban dynamometer schedules under appendix I to part 86 of title 40, Code of Federal Regulations, or

(II) capable of a payload capacity of at least 1,000 pounds.

(C) In the case of a vehicle with a gross vehicle weight rating exceeding 8,500 pounds but not exceeding 14,000 pounds, \$10,000.

(D) In the case of a vehicle with a gross vehicle weight rating exceeding 14,000 pounds but not exceeding 26,000 pounds, \$20,000.

(E) In the case of a vehicle with a gross vehicle weight rating exceeding 26,000 pounds, \$40,000.

[(3)] (2) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27 and 29, over—

(B) the tentative minimum tax for the taxable year.

(c) QUALIFIED BATTERY ELECTRIC VEHICLE.—For purposes of this section—

(1) IN GENERAL.—The term “qualified battery electric vehicle” means any motor vehicle—

[(A) which is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current,]

(A) which is—

(i) operated solely by use of a battery or battery pack, or

(ii) powered primarily through the use of an electric battery or battery pack using a flywheel or capacitor which stores energy produced by an electric motor through regenerative braking to assist in vehicle operation,

(B) the original use of which commences with the taxpayer, and

(C) which is acquired for use or lease by the taxpayer and not for resale.

* * * * *

(d) SPECIAL RULES.—

(1) * * *

* * * * *

(5) *NO DOUBLE BENEFIT.*—The amount of any deduction or credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

(6) *PROPERTY USED BY TAX-EXEMPT ENTITIES.*—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any sale or lease contract the specific amount of any credit otherwise allowable to the entity under this section and reduces the sale or lease price of such vehicle by an equivalent amount of such credit.

(7) *CARRYFORWARD ALLOWED.*—

(A) *IN GENERAL.*—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(3) for such taxable year, such excess shall be allowed as a credit carryforward for each of the 20 taxable years following such taxable year.

(B) *RULES.*—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under subparagraph (A).

(e) *TERMINATION.*—This section shall not apply to any property placed in service after December 31, [2004] 2007.

* * * * *

SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) *ALLOWANCE OF CREDIT.*—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

(2) the new qualified hybrid motor vehicle credit determined under subsection (c),

(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d), and

(4) the advanced lean burn technology motor vehicle credit determined under subsection (e).

(b) *NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.*—

(1) *IN GENERAL.*—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

(A) \$4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) \$10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) \$20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) \$40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(2) INCREASE FOR FUEL EFFICIENCY.—

(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

(i) \$1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

(ii) \$1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

(iii) \$2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

(iv) \$2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy,

(v) \$3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy,

(vi) \$3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2000 model year city fuel economy, and

(vii) \$4,000, if such vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

(B) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2000 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

(i) In the case of a passenger automobile:

If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 or 8,500 lbs	11.1 mpg.

(ii) In the case of a light truck:

If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg

<i>If vehicle inertia weight class is:</i>	<i>The 2000 model year city fuel economy is:</i>
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 or 8,500 lbs	12.0 mpg.

(C) **VEHICLE INERTIA WEIGHT CLASS.**—For purposes of subparagraph (B), the term “vehicle inertia weight class” has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(3) **NEW QUALIFIED FUEL CELL MOTOR VEHICLE.**—For purposes of this subsection, the term “new qualified fuel cell motor vehicle” means a motor vehicle—

(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

(B) which, in the case of a passenger automobile or light truck—

(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

(C) the original use of which commences with the taxpayer,

(D) which is acquired for use or lease by the taxpayer and not for resale, and

(E) which is made by a manufacturer.

(c) **NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.**—

(1) **IN GENERAL.**—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

(2) **CREDIT AMOUNT.**—

(A) **IN GENERAL.**—The credit amount determined under this paragraph shall be determined in accordance with the following tables:

(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which provides the following percentage of the maximum available power:

If percentage of the maximum available power is: The credit amount is:

At least 2.5 percent but less than 10 percent	\$250
At least 10 percent but less than 20 percent	\$500
At least 20 percent but less than 30 percent	\$750
At least 30 percent	\$1,000.

(ii) In the case of a new qualified hybrid motor vehicle which is a heavy duty hybrid motor vehicle and which provides the following percentage of the maximum available power:

(I) If such vehicle has a gross vehicle weight rating of not more than 14,000 pounds:

If percentage of the maximum available power is: The credit amount is:

At least 20 percent but less than 30 percent	\$1,500
At least 30 percent but less than 40 percent	\$1,750
At least 40 percent but less than 50 percent	\$2,000
At least 50 percent but less than 60 percent	\$2,250
At least 60 percent	\$2,500.

(II) If such vehicle has a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds:

If percentage of the maximum available power is: The credit amount is:

At least 20 percent but less than 30 percent	\$4,000
At least 30 percent but less than 40 percent	\$4,500
At least 40 percent but less than 50 percent	\$5,000
At least 50 percent but less than 60 percent	\$5,500
At least 60 percent	\$6,000.

(III) If such vehicle has a gross vehicle weight rating of more than 26,000 pounds:

If percentage of the maximum available power is: The credit amount is:

At least 20 percent but less than 30 percent	\$6,000
At least 30 percent but less than 40 percent	\$7,000
At least 40 percent but less than 50 percent	\$8,000
At least 50 percent but less than 60 percent	\$9,000
At least 60 percent	\$10,000.

(B) INCREASE FOR FUEL EFFICIENCY.—

(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a passenger automobile or light truck shall be increased by—

(I) \$1,000, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

(II) \$1,500, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

(III) \$2,000, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

(IV) \$2,500, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

(V) \$3,000, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

(VI) \$3,500, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

(ii) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

(iii) OPTION TO USE LIKE VEHICLE.—For purposes of clause (i), at the option of the vehicle manufacturer, the increase for fuel efficiency may be calculated by comparing the new qualified hybrid motor vehicle to a “like vehicle”.

(C) INCREASE FOR ACCELERATED EMISSIONS PERFORMANCE.—The amount determined under subparagraph (A)(ii) with respect to an applicable heavy duty hybrid motor vehicle shall be increased by the increase credit amount determined in accordance with the following tables:

(i) In the case of a vehicle which has a gross vehicle weight rating of not more than 14,000 pounds:

If the model year is:	The increase credit amount is:
2002	\$3,500
2003	\$3,000
2004	\$2,500
2005	\$2,000
2006	\$1,500.

(ii) In the case of a vehicle which has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds:

If the model year is:	The increase credit amount is:
2002	\$9,000
2003	\$7,750
2004	\$6,500
2005	\$5,250
2006	\$4,000.

(iii) In the case of a vehicle which has a gross vehicle weight rating of more than 26,000 pounds:

If the model year is:	The increase credit amount is:
2002	\$14,000
2003	\$12,000
2004	\$10,000
2005	\$8,000
2006	\$6,000.

(D) CONSERVATION CREDIT.—

(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a passenger automobile or light truck shall be increased by—

(I) \$250, if such vehicle achieves a lifetime fuel savings of at least 1,500 gallons of gasoline, and

(II) \$500, if such vehicle achieves a lifetime fuel savings of at least 2,500 gallons of gasoline.

(ii) LIFETIME FUEL SAVINGS FOR LIKE VEHICLE.—For purposes of clause (i), at the option of the vehicle manufacturer, the lifetime fuel savings fuel may be calculated by comparing the new qualified hybrid motor vehicle to a “like vehicle”.

(E) DEFINITIONS.—

(i) *APPLICABLE HEAVY DUTY HYBRID MOTOR VEHICLE.*—For purposes of subparagraph (C), the term “applicable heavy duty hybrid motor vehicle” means a heavy duty hybrid motor vehicle which is powered by an internal combustion or heat engine which is certified as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2007 and later model year diesel heavy duty engines or 2008 and later model year ottocycle heavy duty engines, as applicable.

(ii) *HEAVY DUTY HYBRID MOTOR VEHICLE.*—For purposes of this paragraph, the term “heavy duty hybrid motor vehicle” means a new qualified hybrid motor vehicle which has a gross vehicle weight rating of more than 10,000 pounds and draws propulsion energy from both of the following onboard sources of stored energy:

(I) An internal combustion or heat engine using consumable fuel which, for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds a level of not greater than 3.0 grams per brake horsepower-hour of oxides of nitrogen and 0.01 per brake horsepower-hour of particulate matter.

(II) A rechargeable energy storage system.

(iii) *MAXIMUM AVAILABLE POWER.*—

(I) *PASSENGER AUTOMOBILE OR LIGHT TRUCK.*—For purposes of subparagraph (A)(i), the term “maximum available power” means the maximum power available from the battery or other electrical storage device, during a standard 10 second pulse power test, divided by the sum of the battery or other electrical storage device and the SAE net power of the heat engine.

(II) *HEAVY DUTY HYBRID MOTOR VEHICLE.*—For purposes of subparagraph (A)(ii), the term “maximum available power” means the maximum power available from the battery or other electrical storage device, during a standard 10 second pulse power test, divided by the vehicle’s total traction power. The term “total traction power” means the sum of the electric motor peak power and the heat engine peak power of the vehicle, except that if the electric motor is the sole means by which the vehicle can be driven, the total traction power is the peak electric motor power.

(iv) *LIKE VEHICLE.*—For purposes of subparagraph (B)(iii), the term “like vehicle” for a new qualified hybrid motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

(I) Body style (2-door or 4-door).

(II) Transmission (automatic or manual).

(III) Acceleration performance (± 0.05 seconds).

(IV) Drivetrain (2-wheel drive or 4-wheel drive).

(V) *Certification by the Administrator of the Environmental Protection Agency.*

(v) *LIFETIME FUEL SAVINGS.—For purposes of subsection (c)(2)(D), the term “lifetime fuel savings” shall be calculated by dividing 120,000 by the difference between the 2000 model year city fuel economy for the vehicle inertia weight class and the city fuel economy for the new qualified hybrid motor vehicle.*

(3) *NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection, the term “new qualified hybrid motor vehicle” means a motor vehicle—*

(A) which draws propulsion energy from onboard sources of stored energy which are both—

(i) an internal combustion or heat engine using combustible fuel, and

(ii) a rechargeable energy storage system,

(B) which, in the case of a passenger automobile or light truck, for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year,

(C) the original use of which commences with the taxpayer,

(D) which is acquired for use or lease by the taxpayer and not for resale, and

(E) which is made by a manufacturer.

(d) *NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—*

(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

(A) 50 percent, plus

(B) 30 percent, if such vehicle—

(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

(ii) has received an order from an applicable State certifying the vehicle for sale or lease in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer’s

suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

(A) \$5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) \$10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) \$25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) \$40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(4) **QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE DEFINED.**—For purposes of this subsection—

(A) **IN GENERAL.**—The term “qualified alternative fuel motor vehicle” means any motor vehicle—

(i) which is only capable of operating on an alternative fuel,

(ii) the original use of which commences with the taxpayer,

(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

(iv) which is made by a manufacturer.

(B) **ALTERNATIVE FUEL.**—The term “alternative fuel” means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

(5) **CREDIT FOR MIXED-FUEL VEHICLES.**—

(A) **IN GENERAL.**—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

(ii) in the case of a 95/5 mixed-fuel vehicle, 95 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

(B) **MIXED-FUEL VEHICLE.**—For purposes of this subsection, the term “mixed-fuel vehicle” means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

(ii) either—

(I) has received a certificate of conformity under the Clean Air Act, or

(II) has received an order from an applicable State certifying the vehicle for sale or lease in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40,

Code of Federal Regulations, for that make and model year vehicle,

(iii) the original use of which commences with the taxpayer,

(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

(v) which is made by a manufacturer.

(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term “75/25 mixed-fuel vehicle” means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

(D) 95/5 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term “95/5 mixed-fuel vehicle” means a mixed-fuel vehicle which operates using at least 95 percent alternative fuel and not more than 5 percent petroleum-based fuel.

(e) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new qualified advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

(2) CREDIT AMOUNT.—

(A) INCREASE FOR FUEL EFFICIENCY.—The credit amount determined under this paragraph shall be—

(i) \$1,000, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

(ii) \$1,500, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

(iii) \$2,000, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

(iv) \$2,500, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

(v) \$3,000, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

(vi) \$3,500, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to an advanced lean burn technology motor vehicle shall be increased by—

(i) \$250, if such vehicle achieves a lifetime fuel savings of at least 1,500 gallons of gasoline, and

(ii) \$500, if such vehicle achieves a lifetime fuel savings of at least 2,500 gallons of gasoline.

(C) *OPTION TO USE LIKE VEHICLE.*—At the option of the vehicle manufacturer, the increase for fuel efficiency and conservation credit may be calculated by comparing the new advanced lean-burn technology motor vehicle to a like vehicle.

(3) *DEFINITIONS.*—For purposes of this subsection.—

(A) *ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.*—For purposes of subparagraph (E), the term “advanced lean burn technology motor vehicle” means a motor vehicle with an internal combustion engine that—

(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

(ii) incorporates direct injection,

(iii) achieves at least 125 percent of the 2000 model year city fuel economy, and

(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5, Tier 2 emission levels (for passenger vehicles) or Bin 8, Tier 2 emission levels (for light trucks) established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle.

(B) *LIKE VEHICLE.*—The term “like vehicle” for an advanced lean burn technology motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

(i) Body style (2-door or 4-door),

(ii) Transmission (automatic or manual),

(III) Acceleration performance (± 0.05 seconds).

(IV) Drivetrain (2-wheel drive or 4-wheel drive).

(V) Certification by the Administrator of the Environmental Protection Agency.

(C) *LIFETIME FUEL SAVINGS.*—The term “lifetime fuel savings” shall be calculated by dividing 120,000 by the difference between the 2000 model year city fuel economy for the vehicle inertia weight class and the city fuel economy for the new qualified hybrid motor vehicle.

(f) *LIMITATION BASED ON AMOUNT OF TAX.*—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under subpart A and sections 27, 29, and 30A for the taxable year.

(g) *OTHER DEFINITIONS AND SPECIAL RULES.*—For purposes of this section—

(1) *CONSUMABLE FUEL.*—The term “consumable fuel” means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

(2) *MOTOR VEHICLE.*—The term “motor vehicle” has the meaning given such term by section 30(c)(2).

(3) **2000 MODEL YEAR CITY FUEL ECONOMY.**—The 2000 model year city fuel economy with respect to any vehicle shall be measured under rules similar to the rules under section 4064(c).

(4) **OTHER TERMS.**—The terms “automobile”, “passenger automobile”, “light truck”, and “manufacturer” have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(5) **REDUCTION IN BASIS.**—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

(6) **NO DOUBLE BENEFIT.**—The amount of any deduction or credit allowable under this chapter (other than the credit allowable under this section)—

(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (d) shall be reduced by the amount of such credit attributable to such cost, and

(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

(7) **PROPERTY USED BY TAX-EXEMPT ENTITIES.**—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any sale or lease document the specific amount of any credit otherwise allowable to the entity under this section and reduces the sale or lease price of such vehicle by an equivalent amount of such credit.

(8) **RECAPTURE.**—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

(9) **PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.**—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

(10) **ELECTION TO NOT TAKE CREDIT.**—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(11) **CARRYFORWARD ALLOWED.**—

(A) **IN GENERAL.**—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (f) for such taxable year (referred to as the “unused credit year” in this paragraph), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

(B) *RULES.*—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under subparagraph (A).

(12) *INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.*—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(h) *REGULATIONS.*—

(1) *IN GENERAL.*—The Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

(2) *ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY.*—The Administrator of the Environmental Protection Agency, in coordination with the Secretary of Transportation and the Secretary of the Treasury, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

(i) *TERMINATION.*—This section shall not apply to any property placed in service after—

(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2011, and

(2) in the case of any other property, December 31, 2007.

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Subpart D—Business Related Credits

Sec. 38. General business credit.

* * * * *

Sec. 45G. Energy efficient appliance credit.

Sec. 45H. New energy efficient home credit.

Sec. 45I. Environmental tax credit.

Sec. 45J. Credit for producing oil and gas from marginal wells.

Sec. 45K. Credit for production from qualifying advanced clean coal technology.

* * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) * * *

(b) *CURRENT YEAR BUSINESS CREDIT.*—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) * * *

* * * * *

(14) in the case of an eligible employer (as defined in section 45E(c)), the small employer pension plan startup cost credit determined under section 45E(a), **[plus]**

(15) the employer-provided child care credit determined under section 45F**[.],**

(16) the energy efficient appliance credit determined under section 45G(a),

(17) *the new energy efficient home credit determined under section 45H,*

(18) *in the case of a small business refiner, the environmental tax credit determined under section 45I(a),*

(19) *the marginal oil and gas well production credit determined under section 45J(a), plus*

(20) *the qualifying advanced clean coal technology production credit determined under section 45K(a).*

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) * * *

(2) EMPOWERMENT ZONE EMPLOYMENT CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

(A) IN GENERAL.—In the case of the empowerment zone employment credit—

(i) * * *

(ii) for purposes of applying paragraph (1) to such credit—

(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit or the specified energy credits).

(3) SPECIAL RULES FOR SPECIFIED ENERGY CREDITS.—

(A) IN GENERAL.—In the case of specified energy credits—

(i) *this section and section 39 shall be applied separately with respect to such credits, and*

(ii) *in applying paragraph (1) to such credits—*

(I) *the tentative minimum tax shall be treated as being zero, and*

(II) *the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified energy credits).*

(B) SPECIFIED ENERGY CREDITS.—For purposes of this subsection, the term “specified energy credits” means the credits determined under sections 45G, 45H, 45I, 45J, and 45K.

[(3)] (4) SPECIAL RULES.—

(A) * * *

(B) CONTROLLED GROUPS.—In the case of a controlled group, the \$25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced for each component member of such group by apportioning \$25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term “controlled group” has the meaning given to such term by section 1563(a). For taxable years beginning before January 1, 2005, such term includes the credit determined under section 43.

* * * * *

SEC. 39. CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.**(a) IN GENERAL.—****(1) * * ***

* * * * *

(3) 10-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—*In the case of the marginal oil and gas well production credit—*

(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

(B) paragraph (1) shall be applied by substituting “10 taxable years” for “1 taxable years” in subparagraph (A) thereof, and

(C) paragraph (2) shall be applied—

(i) by substituting “31 taxable years” for “21 taxable years” in subparagraph (A) thereof, and

(ii) by substituting “30 taxable years” for “20 taxable years” in subparagraph (A) thereof.

* * * * *

(d) TRANSITIONAL RULES.—**(1) * * ***

* * * * *

(11) NO CARRYBACK OF ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—*No portion of the unused business credit for any taxable year which is attributable to the energy efficient appliance credit determined under section 45G may be carried to a taxable year ending before the date of the enactment of section 45G.*

(12) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—*No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45H may be carried back to any taxable year ending before January 1, 2002.*

(13) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—*No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending before January 1, 2002.*

(14) NO CARRYBACK OF SECTION 48A CREDIT BEFORE EFFECTIVE DATE.—*No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology facility credit determined under section 48A may be carried back to a taxable year ending before January 1, 2002.*

(15) NO CARRYBACK OF SECTION 45K CREDIT BEFORE EFFECTIVE DATE.—*No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology production credit determined under section 45K may be carried back to a taxable year ending before the date of enactment of section 45K.*

SEC. 45. ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) * * *

* * * * *

(c) **DEFINITIONS.**—For purposes of this section—

(1) * * *

* * * * *

(3) **QUALIFIED FACILITY.**—

(A) **WIND FACILITY.**—In the case of a facility using wind to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, [2002] 2007.

(B) **CLOSED-LOOP BIOMASS FACILITY.**—In the case of a facility using closed-loop biomass to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, [2002] 2007.

* * * * *

(D) **OPEN-LOOP BIOMASS FACILITIES.**—*In the case of a facility using open-loop biomass to produce electricity, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.*

(E) **LANDFILL GAS FACILITIES.**—*In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term “qualified facility” means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.*

* * * * *

(5) **OPEN-LOOP BIOMASS.**—*The term “open-loop biomass” means any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—*

(A) *any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, but not including old-growth timber,*

(B) *solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled, or*

(C) *agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.*

Such term shall not include closed-loop biomass.

(6) **REDUCED CREDIT FOR CERTAIN PREEFFECTIVE DATE FACILITIES.**—*In the case of any facility described in subparagraph (D) or (E) of paragraph (3) which is placed in service before the date of the enactment of this subparagraph—*

(A) subsection (a)(1) shall be applied by substituting “1.0 cents” for “1.5 cents”, and

(B) the 5-year period beginning on the date of the enactment of this paragraph shall be substituted in lieu of the 10-year period in subsection (a)(2)(A)(ii).

(7) **LIMIT ON REDUCTIONS FOR GRANTS, ETC., FOR OPEN-LOOP BIOMASS FACILITIES.**—If the amount of the credit determined under subsection (a) with respect to any open-loop biomass facility is required to be reduced under paragraph (3) of subsection (b), the fraction under such paragraph shall in no event be greater than $\frac{4}{5}$.

(8) **COORDINATION WITH SECTION 29.**—The term “qualified facility” shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.

* * * * *

SEC. 45A. INDIAN EMPLOYMENT CREDIT.

(a) * * *

* * * * *

(f) **TERMINATION.**—This section shall not apply to taxable years beginning after December 31, 2003. The preceding sentence shall be applied by substituting “December 31, 2006” for “December 31, 2003” in the case of wages paid for services performed at a facility described in section 168(j)(8).

* * * * *

SEC. 45G. ENERGY EFFICIENT APPLIANCE CREDIT.

(a) **GENERAL RULE.**—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the applicable amount determined under subsection (b) with respect to the eligible production of qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

(b) **APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.**—For purposes of subsection (a)—

(1) **APPLICABLE AMOUNT.**—The applicable amount is—

(A) \$50 in the case of an energy efficient clothes washer described in subsection (d)(2)(A) or an energy efficient refrigerator described in subsection (d)(3)(B)(i), and

(B) \$100 in the case of any other energy efficient clothes washer or energy efficient refrigerator.

(2) **ELIGIBLE PRODUCTION.**—

(A) **IN GENERAL.**—The eligible production of each category of qualified energy efficient appliances is the excess of—

(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 1998, 1999, and 2000.

(B) **CATEGORIES.**—For purposes of subparagraph (A), the categories are—

(i) energy efficient clothes washers described in subsection (d)(2)(A),

(ii) energy efficient clothes washers described in subsection (d)(2)(B),

(iii) energy efficient refrigerators described in subsection (d)(3)(B)(i), and

(iv) energy efficient refrigerators described in subsection (d)(3)(B)(ii).

(C) *SPECIAL RULE FOR 2001 PRODUCTION.*—For purposes of determining eligible production for calendar year 2001—

(i) only production after the date of the enactment of this section shall be taken into account under subparagraph (A)(i), and

(ii) the amount taken into account under subparagraph (A)(ii) shall be an amount which bears the same ratio to the amount which would (but for this subparagraph) be taken into account under subparagraph (A)(ii) as—

(I) the number of days in calendar year 2001 after the date of the enactment of this section, bears to

(II) 365.

(c) *LIMITATION ON MAXIMUM CREDIT.*—

(1) *IN GENERAL.*—The maximum amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall be—

(A) \$30,000,000 with respect to the credit determined under subsection (b)(1)(A), and

(B) \$30,000,000 with respect to the credit determined under subsection (b)(1)(B).

(2) *LIMITATION BASED ON GROSS RECEIPTS.*—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

(3) *GROSS RECEIPTS.*—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(d) *QUALIFIED ENERGY EFFICIENT APPLIANCE.*—For purposes of this section:

(1) *IN GENERAL.*—The term “qualified energy efficient appliance” means—

(A) an energy efficient clothes washer, or

(B) an energy efficient refrigerator.

(2) *ENERGY EFFICIENT CLOTHES WASHER.*—The term “energy efficient clothes washer” means a residential clothes washer, including a residential style coin operated washer, which is manufactured with—

(A) a 1.26 MEF or greater, or

(B) a 1.42 MEF (1.5 MEF for washers produced after 2004) or greater.

(3) *ENERGY EFFICIENT REFRIGERATOR.*—The term “energy efficient refrigerator” means an automatic defrost refrigerator-freezer which—

(A) has an internal volume of at least 16.5 cubic feet, and

(B) consumes—

- (i) 10 percent less kw/hr/yr than the energy conservation standards promulgated by the Department of Energy for refrigerators produced during 2001, and
- (ii) 15 percent less kw/hr/yr than such energy conservation standards for refrigerators produced after 2001.

(4) **MEF.**—The term “MEF” means Modified Energy Factor (as determined by the Secretary of Energy).

(e) **SPECIAL RULES.**—

(1) **IN GENERAL.**—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

(2) **AGGREGATION RULES.**—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

(f) **VERIFICATION.**—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

(g) **TERMINATION.**—This section shall not apply—

- (1) with respect to energy efficient refrigerators described in subsection (d)(3)(B)(i) produced after 2004, and
- (2) with respect to all other qualified energy efficient appliances produced after 2006.

SEC. 45H. NEW ENERGY EFFICIENT HOME CREDIT.

(a) **IN GENERAL.**—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualified new energy efficient home during construction of such home.

(b) **LIMITATIONS.**—

(1) **MAXIMUM CREDIT.**—

(A) **IN GENERAL.**—The credit allowed by this section with respect to a dwelling shall not exceed \$2,000.

(B) **PRIOR CREDIT AMOUNTS ON SAME DWELLING TAKEN INTO ACCOUNT.**—If a credit was allowed under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of \$2,000 reduced by the sum of the credits allowed under subsection (a) with respect to the dwelling for all prior taxable years.

(2) **COORDINATION WITH REHABILITATION AND ENERGY CREDITS.**—For purposes of this section—

(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)) or to the energy percentage of energy property (as determined under section 48(a)), and

(B) expenditures taken into account under either section 47 or 48(a) shall not be taken into account under this section.

(c) **DEFINITIONS.**—For purposes of this section—

(1) *ELIGIBLE CONTRACTOR.*—The term “eligible contractor” means the person who constructed the new energy efficient home, or in the case of a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280), the manufactured home producer of such home.

(2) *ENERGY EFFICIENT PROPERTY.*—The term “energy efficient property” means any energy efficient building envelope component, and any energy efficient heating or cooling appliance.

(3) *QUALIFIED NEW ENERGY EFFICIENT HOME.*—The term “qualified new energy efficient home” means a dwelling—

(A) located in the United States,

(B) the construction of which is substantially completed after December 31, 2001,

(C) the original use of which is as a principal residence (within the meaning of section 121) which commences with the person who acquires such dwelling from the eligible contractor, and

(D) which is certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 1998 International Energy Conservation Code.

(4) *CONSTRUCTION.*—The term “construction” includes reconstruction and rehabilitation.

(5) *ACQUIRE.*—The term “acquire” includes purchase and, in the case of reconstruction and rehabilitation, such term includes a binding written contract for such reconstruction or rehabilitation.

(6) *BUILDING ENVELOPE COMPONENT.*—The term “building envelope component” means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

(7) *MANUFACTURED HOME INCLUDED.*—The term “dwelling” includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

(d) *CERTIFICATION.*—

(1) *METHOD.*—A certification described in subsection (c)(3)(D) shall be determined on the basis of one of the following methods:

(A) The technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency for the energy efficient building envelope component or energy efficient heating or cooling appliance, based upon energy use or building envelope component performance.

(B) An energy performance measurement method that utilizes computer software approved by organizations designated by the Secretary.

(2) *PROVIDER.*—Such certification shall be provided by—

(A) in the case of a method described in paragraph (1)(A), a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating systems provider who is accredited by, or otherwise authorized to use, approved energy performance measurement methods by the Home Energy Ratings Systems Council or the National Association of State Energy Officials, or

(B) in the case of a method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

(3) *FORM.*—Such certification shall be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling appliances installed and their respective energy efficiency levels, and in the case of a method described in subparagraph (B) of paragraph (1), accompanied by written analysis documenting the proper application of a permissible energy performance measurement method to the specific circumstances of such dwelling.

(4) *REGULATIONS.*—

(A) *IN GENERAL.*—In prescribing regulations under this subsection for energy performance measurement methods, the Secretary shall prescribe procedures for calculating annual energy costs for heating and cooling and cost savings and for the reporting of the results. Such regulations shall—

(i) be based on the National Home Energy Rating Technical Guidelines of the National Association of State Energy Officials, the Home Energy Rating Guidelines of the Home Energy Rating Systems Council, or the modified 1998 California Residential ACM manual,

(ii) provide that any calculation procedures be developed such that the same energy efficiency measures allow a home to qualify for the credit under this section regardless of whether the house uses a gas or oil furnace or boiler or an electric heat pump, and

(iii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and explanations for the homebuyer of the energy efficient features that were used to comply with the requirements of this section.

(B) *PROVIDERS.*—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the National Association of State Energy Officials.

(e) *BASIS ADJUSTMENT.*—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) *APPLICATION OF SECTION.*—Subsection (a) shall apply to dwellings purchased during the period beginning on January 1, 2002, and ending on December 31, 2006.

SEC. 45I. ENVIRONMENTAL TAX CREDIT.

(a) *IN GENERAL.*—For purposes of section 38, the amount of the environmental tax credit determined under this section with respect to any small business refiner for any taxable year is an amount equal to 5 cents for every gallon of 15 parts per million or less sulfur diesel produced at a facility by such small business refiner.

(b) *MAXIMUM CREDIT.*—For any small business refiner, the aggregate amount allowable as a credit under subsection (a) for any taxable year with respect to any facility shall not exceed 25 percent of the qualified capital costs incurred by such small business refiner with respect to such facility not taken into account in determining the credit under subsection (a) for any preceding taxable year.

(c) *DEFINITIONS.*—For purposes of this section—

(1) *SMALL BUSINESS REFINER.*—The term “small business refiner” means, with respect to any taxable year, a refiner which, within the refining operations of the business, employs not more than 1,500 employees on business days during such taxable year performing services in the refining operations of such businesses and has an average total capacity of 155,000 barrels per day or less.

(2) *QUALIFIED CAPITAL COSTS.*—The term “qualified capital costs” means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of 15 parts per million or less sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

(3) *APPLICABLE EPA REGULATIONS.*—The term “applicable EPA regulations” means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(4) *APPLICABLE PERIOD.*—The term “applicable period” means, with respect to any facility, the period beginning on the day after the date of the enactment of this section and ending with the date which is one year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

(d) *REDUCTION IN BASIS.*—For purposes of this subtitle, if a credit is determined under this section with respect to any property by reason of qualified capital costs, the basis of such property shall be reduced by the amount of the credit so determined.

(e) *CERTIFICATION.*—

(1) *REQUIRED.*—Not later than the date which is 30 months after the first day of the first taxable year in which the environmental tax credit is allowed with respect to a facility, the small business refiner must obtain certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer’s qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

(2) **CONTENTS OF APPLICATION.**—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

(3) **REVIEW PERIOD.**—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application.

(4) **RECAPTURE.**—Notwithstanding subsection (f), failure to obtain certification under paragraph (1) constitutes a recapture event under subsection (f) with an applicable percentage of 100 percent.

(f) **RECAPTURE OF ENVIRONMENTAL TAX CREDIT.**—

(1) **IN GENERAL.**—Except as provided in subsection (e), if, as of the close of any taxable year, there is a recapture event with respect to any facility of the small business refiner, then the tax of such refiner under this chapter for such taxable year shall be increased by an amount equal to the product of—

(A) the applicable recapture percentage, and

(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified capital costs of the taxpayer described in subsection (c)(2) with respect to such facility had been zero.

(2) **APPLICABLE RECAPTURE PERCENTAGE.**—

(A) **IN GENERAL.**—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

If the recapture event occurs in:	The applicable recapture percentage is:
Year 1	100
Year 2	80
Year 3	60
Year 4	40
Year 5	20
Years 6 and thereafter	0.

(B) **YEARS.**—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified capital costs with respect to a facility described in subsection (c)(2) are paid or incurred by the taxpayer.

(3) **RECAPTURE EVENT DEFINED.**—For purposes of this subsection, the term “recapture event” means—

(A) **FAILURE TO COMPLY.**—The failure by the small business refiner to meet the applicable EPA regulations within the applicable period with respect to the facility.

(B) **CESSATION OF OPERATION.**—The cessation of the operation of the facility as a facility which produces 15 parts per million or less sulfur diesel after the applicable period.

(C) **CHANGE IN OWNERSHIP.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), the disposition of a small business refiner’s interest in the facility with respect to which the credit described in subsection (a) was allowable.

(ii) *AGREEMENT TO ASSUME RECAPTURE LIABILITY.*—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

(4) *SPECIAL RULES.*—

(A) *TAX BENEFIT RULE.*—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) *NO CREDITS AGAINST TAX.*—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(C) *NO RECAPTURE BY REASON OF CASUALTY LOSS.*—The increase in tax under this subsection shall not apply to a cessation of operation of the facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(g) *CONTROLLED GROUPS.*—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

SEC. 45J. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

(a) *GENERAL RULE.*—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

(1) the credit amount, and

(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

(b) *CREDIT AMOUNT.*—For purposes of this section—

(1) *IN GENERAL.*—The credit amount is—

(A) \$3 per barrel of qualified crude oil production, and

(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

(2) *REDUCTION AS OIL AND GAS PRICES INCREASE.*—

(A) *IN GENERAL.*—The \$3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

(i) the excess (if any) of the applicable reference price over \$15 (\$1.67 for qualified natural gas production), bears to

(ii) \$3 (\$0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

(B) *INFLATION ADJUSTMENT.*—In the case of any taxable year beginning in a calendar year after 2001, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting “2000” for “1990”).

(C) *REFERENCE PRICE.*—For purposes of this paragraph, the term “reference price” means, with respect to any calendar year—

(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

(ii) in the case of qualified natural gas production, the Secretary’s estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

(c) *QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.*—For purposes of this section—

(1) *IN GENERAL.*—The terms “qualified crude oil production” and “qualified natural gas production” mean domestic crude oil or natural gas which is produced from a qualified marginal well.

(2) *LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.*—

(A) *IN GENERAL.*—Crude oil or natural gas produced during any taxable year from any well shall not be treated or qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

(B) *PROPORTIONATE REDUCTIONS.*—

(i) *SHORT TAXABLE YEARS.*—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

(ii) *WELLS NOT IN PRODUCTION ENTIRE YEAR.*—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

(3) *DEFINITIONS.*—

(A) *QUALIFIED MARGINAL WELL.*—The term “qualified marginal well” means a domestic well—

(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

(ii) which, during the taxable year—

(I) has average daily production of not more than 25 barrel equivalents, and

(II) produces water at a rate not less than 95 percent of total well effluent.

(B) *CRUDE OIL, ETC.*—The terms “crude oil”, “natural gas”, “domestic”, and “barrel” have the meanings given such terms by section 613A(e).

(C) *BARREL EQUIVALENT.*—The term “barrel equivalent” means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

(d) *OTHER RULES.*—

(1) *PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.*—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer’s revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

(2) *OPERATING INTEREST REQUIRED.*—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

(3) *PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.*—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.

(4) *NONCOMPLIANCE WITH POLLUTION LAWS.*—For purposes of subsection (c)(3)(A), a marginal well which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualified marginal well during such period.

SEC. 45K. CREDIT FOR PRODUCTION FROM QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) *GENERAL RULE.*—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

(1) the applicable amount of advanced clean coal technology production credit, multiplied by

(2) the sum of—

(A) the kilowatt hours of electricity, plus

(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology facility during the 10-year period beginning on the date the facility was originally placed in service.

(b) *APPLICABLE AMOUNT.*—For purposes of this section, the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology facility shall be determined as follows:

(1) Where the design coal has a heat content of more than 9,000 Btu per pound:

(A) In the case of a facility originally placed in service before 2009, if—

<i>The facility design net heat rate, Btu/kWh (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 8,400</i>	<i>\$.0060</i>	<i>\$.0038</i>
<i>More than 8,400 but not more than 8,550</i>	<i>\$.0025</i>	<i>\$.0010</i>
<i>More than 8,550 but not more than 8,750</i>	<i>\$.0010</i>	<i>\$.0010.</i>

(B) In the case of a facility originally placed in service after 2008 and before 2013, if—

<i>The facility design net heat rate, Btu/kWh (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 7,770</i>	<i>\$.0105</i>	<i>\$.0090</i>
<i>More than 7,770 but not more than 8,125</i>	<i>\$.0085</i>	<i>\$.0068</i>
<i>More than 8,125 but not more than 8,350</i>	<i>\$.0075</i>	<i>\$.0055.</i>

(C) In the case of a facility originally placed in service after 2012 and before 2017, if—

<i>The facility design net heat rate, Btu/kWh (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 7,380</i>	<i>\$.0140</i>	<i>\$.01</i>
<i>More than 7,380 but not more than 7,720</i>	<i>\$.0120</i>	<i>\$.0090.</i>

(2) Where the design coal has a heat content of not more than 9,000 Btu per pound:

(A) In the case of a facility originally placed in service before 2009, if—

<i>The facility design net heat rate, Btu/kWh (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 8,500</i>	<i>\$.0060</i>	<i>\$.0038</i>
<i>More than 8,500 but not more than 8,650</i>	<i>\$.0025</i>	<i>\$.0010</i>
<i>More than 8,650 but not more than 8,750</i>	<i>\$.0010</i>	<i>\$.0010.</i>

(B) In the case of a facility originally placed in service after 2008 and before 2013, if—

<i>The facility design net heat rate, Btu/kWh (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 8,000</i>	<i>\$.0105</i>	<i>\$.009</i>
<i>More than 8,000 but not more than 8,250</i>	<i>\$.0085</i>	<i>\$.0068</i>
<i>More than 8,250 but not more than 8,400</i>	<i>\$.0075</i>	<i>\$.0055.</i>

(C) In the case of a facility originally placed in service after 2012 and before 2017, if—

<i>The facility design net heat rate, Btu/kWh (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not more than 7,800</i>	<i>\$.0140</i>	<i>\$.0115</i>
<i>More than 7,800 but not more than 7,950</i>	<i>\$.0120</i>	<i>\$.0090.</i>

(3) Where the clean coal technology facility is producing fuel or chemicals:

(A) In the case of a facility originally placed in service before 2009, if—

<i>The facility design net thermal efficiency (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not less than 40.6 percent</i>	<i>\$.0060</i>	<i>\$.0038</i>
<i>Less than 40.6 but not less than 40 percent</i>	<i>\$.0025</i>	<i>\$.0010</i>
<i>Less than 40 but not less than 39 percent</i>	<i>\$.0010</i>	<i>\$.0010.</i>

(B) In the case of a facility originally placed in service after 2008 and before 2013, if—

<i>The facility design net thermal efficiency (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not less than 43.9 percent</i>	<i>\$.0105</i>	<i>\$.009</i>
<i>Less than 43.9 but not less than 42 percent</i>	<i>\$.0085</i>	<i>\$.0068</i>
<i>Less than 42 but not less than 40.9 percent</i>	<i>\$.0075</i>	<i>\$.0055.</i>

(C) In the case of a facility originally placed in service after 2012 and before 2017, if—

<i>The facility design net thermal efficiency (HHV) is equal to:</i>	<i>The applicable amount is:</i>	
	<i>For 1st 5 years of such service</i>	<i>For 2d 5 years of such service</i>
<i>Not less than 44.2 percent</i>	<i>\$.0140</i>	<i>\$.0115</i>
<i>Less than 44.2 but not less than 43.6 percent</i>	<i>\$.0120</i>	<i>\$.0090.</i>

(c) INFLATION ADJUSTMENT FACTOR.—For calendar years after 2001, each amount in paragraphs (1), (2), and (3) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) IN GENERAL.—Any term used in this section which is also used in section 48A shall have the meaning given such term in section 48A.

(2) *APPLICABLE RULES.*—The rules of paragraphs (3), (4), and (5) of section 45 shall apply.

(3) *INFLATION ADJUSTMENT FACTOR.*—The term “inflation adjustment factor” means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2001.

(4) *GDP IMPLICIT PRICE DEFLATOR.*—The term “GDP implicit price deflator” means the most recent revision of the implicit price deflator for the gross domestic product as computed by the Department of Commerce before March 15 of the calendar year.

Subpart E—Rules for Computing Work Investment Credit

Sec. 46. Amount of credit.

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Sec. 48A. Qualifying advanced clean coal technology facility credit.

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SEC. 46. AMOUNT OF CREDIT.

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

- (1) the rehabilitation credit,
- (2) the energy credit, [and]
- (3) the reforestation credit[.]; and
- (4) the qualifying advanced clean coal technology facility credit.

* * * * *

SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT.

(a) **ENERGY CREDIT.**—

(1) * * *

* * * * *

(3) **ENERGY PROPERTY.**—For purposes of this subpart, the term “energy property” means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, [or]

(ii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iii) equipment which is part of a qualified stationary fuel cell powerplant, or

(iv) combined heat and power system property,

* * * * *

(4) **QUALIFIED STATIONARY FUEL CELL POWERPLANT.**—For purposes of this subsection—

(A) *IN GENERAL.*—The term “qualified stationary fuel cell powerplant” means a stationary fuel cell power plant that

has an electricity-only generation efficiency greater than 30 percent.

(B) *LIMITATION.*—In the case of qualified stationary fuel cell powerplant placed in service during the taxable year, the credit under subsection (a) for such year may not exceed \$1,000 for each kilowatt of capacity.

(C) *STATIONARY FUEL CELL POWER PLANT.*—The term “stationary fuel cell power plant” means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

(D) *TERMINATION.*—Such term shall not include any property placed in service after December 31, 2006.

(5) *COMBINED HEAT AND POWER SYSTEM PROPERTY.*—For purposes of this subsection—

(A) *COMBINED HEAT AND POWER SYSTEM PROPERTY.*—The term “combined heat and power system property” means property comprising a system—

(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

(iii) which produces—

(I) at least 20 percent of its total useful energy in the form of thermal energy, and

(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

(v) which is placed in service after December 31, 2001, and before January 1, 2007.

(B) *SPECIAL RULES.*—

(i) *ENERGY EFFICIENCY PERCENTAGE.*—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and

(II) the denominator of which is the lower heating value of the primary fuel source for the system.

(ii) *DETERMINATIONS MADE ON BTU BASIS.*—The energy efficiency percentage and the percentages under

subparagraph (A)(iii) shall be determined on a Btu basis.

(iii) **INPUT AND OUTPUT PROPERTY NOT INCLUDED.**—The term “combined heat and power system property” does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(iv) **PUBLIC UTILITY PROPERTY.**—

(I) **ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.**—If the combined heat and power system property is public utility property (as defined in section 168(i)(1)), the taxpayer may only claim the credit under the subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

(II) **CERTAIN EXCEPTION NOT TO APPLY.**—The matter in paragraph (3) which follows subparagraph (D) shall not apply to combined heat and power system property.

(C) **EXTENSION OF DEPRECIATION RECOVERY PERIOD.**—If a taxpayer is allowed credit under this section for combined heat and power system property and such property would (but for this subparagraph) have a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.

[(4)] (6) **SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.**—

(A) **REDUCTION OF BASIS.**—For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

(i) subsidized energy financing, or

* * * * *

[(5)] (7) **CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.**—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

* * * * *

SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY CREDIT.

(a) **IN GENERAL.**—For purposes of section 46, the qualifying advanced clean coal technology facility credit for any taxable year is an amount equal to 10 percent of the qualified investment in a qualifying advanced clean coal technology facility for such taxable year.

(b) **QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY.**—

(1) **IN GENERAL.**—For purposes of subsection (a), the term “qualifying advanced clean coal technology facility” means a facility of the taxpayer which—

(A)(i)(I) original use of which commences with the taxpayer, or

(II) is a retrofitted or repowered conventional technology facility, the retrofitting or repowering of which is completed

by the taxpayer (but only with respect to that portion of the basis which is properly attributable to such retrofitting or repowering), or

(ii) is acquired through purchase (as defined by section 179(d)(2)),

(B) is depreciable under section 167,

(C) has a useful life of not less than 4 years,

(D) is located in the United States, and

(E) uses qualifying advanced clean coal technology.

(2) *SPECIAL RULE FOR SALE-LEASEBACKS.*—For purposes of subparagraph (A) of paragraph (1), in the case of a facility which—

(A) is originally placed in service by a person, and

(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such facility was originally placed in service, for a period of not less than 12 years,

such facility shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.

(c) *QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.*—For purposes of this section—

(1) *IN GENERAL.*—The term “qualifying advanced clean coal technology” means, with respect to clean coal technology—

(A) which has—

(i) multiple applications, with a combined capacity of not more than 5,000 megawatts (4,000 megawatts before 2009), of advanced pulverized coal or atmospheric fluidized bed combustion technology—

(I) installed as a new, retrofit, or repowering application,

(II) operated between 2000 and 2012, and

(III) having a design net heat rate of not more than 9,500 Btu per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound, or a design net heat rate of not more than 9,900 Btu per kilowatt hour when the design coal has a heat content of 9,000 Btu per pound or less,

(ii) multiple applications, with a combined capacity of not more than 1,000 megawatts (500 megawatts before 2009 and 750 megawatts before 2013), of pressurized fluidized bed combustion technology—

(I) installed as a new, retrofit, or repowering application,

(II) operated between 2000 and 2016, and

(III) having a design net heat rate of not more than 8,400 Btu per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound, or a design net heat rate of not more than 9,900 Btu’s per kilowatt hour when the design coal

has a heat content of 9,000 Btu per pound or less, and

(iii) multiple applications, with a combined capacity of not more than 2,000 megawatts (1,000 megawatts before 2009 and 1,500 megawatts before 2013), of integrated gasification combined cycle technology, with or without fuel or chemical co-production—

(I) installed as a new, retrofit, or repowering application,

(II) operated between 2000 and 2016,

(III) having a design net heat rate of not more than 8,550 Btu per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound, or a design net heat rate of not more than 9,900 Btu per kilowatt hour when the design coal has a heat content of 9,000 Btu per pound or less, and

(IV) having a net thermal efficiency on any fuel or chemical co-production of not less than 39 percent (higher heating value), or

(iv) multiple applications, with a combined capacity of not more than 2,000 megawatts (1,000 megawatts before 2009 and 1,500 megawatts before 2013) of technology for the production of electricity—

(I) installed as a new, retrofit, or repowering application,

(II) operated between 2000 and 2016, and

(III) having a carbon emission rate which is not more than 85 percent of conventional technology, and

(B) which reduces the discharge into the atmosphere of 1 or more of the following pollutants to not more than—

(i) 5 percent of the potential combustion concentration sulfur dioxide emissions for a coal with a potential combustion concentration sulfur emission of 1.2 lb/million btu of heat input or greater,

(ii) 15 percent of the potential combustion concentration sulfur dioxide emissions for a coal with a potential combustion concentration sulfur emission of less than 1.2 lb/million btu of heat input,

(iii) nitrogen oxide emissions of 0.1 lb per million btu of heat input from other than cyclone-fired boilers,

(iv) 15 percent of the uncontrolled nitrogen oxide emissions from cyclone-fired boilers,

(v) particulate emissions of 0.02 lb per million btu of heat input, and

(vi) the emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect at the time of retrofitting, repowering, or replacement of the qualifying clean coal technology unit for the category of source if such level is lower than the levels specified in clause (i), (ii), (iii), (iv), or (v).

(2) EXCEPTIONS.—Such term shall not include any projects receiving or scheduled to receive funding under the Clean Coal

Technology Program, or the Power Plant Improvement administered by the Secretary of the Department of Energy.

(d) **CLEAN COAL TECHNOLOGY.**—For purposes of this section, the term “clean coal technology” means advanced technology which uses coal to produce 75 percent or more of its thermal output as electricity including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle with or without fuel or chemical co-production, and any other technology for the production of electricity which exceeds the performance of conventional technology.

(e) **CONVENTIONAL TECHNOLOGY.**—The term “conventional technology” means—

(1) coal-fired combustion technology with a design net heat rate of not less than 9,500 Btu per kilowatt hour (HHV) and a carbon equivalents emission rate of not more than 0.54 pounds of carbon per kilowatt hour when the design coal has a heat content of more than 9,000 Btu per pound,

(2) coal-fired combustion technology with a design net heat rate of not less than 10,500 Btu per kilowatt hour (HHV) and a carbon equivalents emission rate of not more than 0.60 pounds of carbon per kilowatt hour when the design coal has a heat content of 9,000 Btu per pound or less, or

(3) natural gas-fired combustion technology with a design net heat rate of not less than 7,500 Btu per kilowatt hour (HHV) and a carbon equivalents emission rate of not more than 0.24 pounds of carbon per kilowatt hour.

(f) **DESIGN NET HEAT RATE.**—The design net heat rate shall be based on the design annual heat input to and the design annual net electrical output from the qualifying advanced clean coal technology (determined without regard to such technology’s co-generation of steam).

(g) **SELECTION CRITERIA.**—Selection criteria for qualifying advanced clean coal technology facilities—

(1) shall be established by the Secretary of Energy as part of a competitive solicitation,

(2) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the government, and

(3) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

(h) **QUALIFIED INVESTMENT.**—For purposes of subsection (a), the term “qualified investment” means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology facility placed in service by the taxpayer during such taxable year.

(i) **QUALIFIED PROGRESS EXPENDITURES.**—

(1) **INCREASE IN QUALIFIED INVESTMENT.**—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (c) without regard to this section) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

(2) **PROGRESS EXPENDITURE PROPERTY DEFINED.**—For purposes of this subsection, the term “progress expenditure property” means any property being constructed by or for the tax-

payer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology facility which is being constructed by or for the taxpayer when it is placed in service.

(3) **QUALIFIED PROGRESS EXPENDITURES DEFINED.**—For purposes of this subsection—

(A) **SELF-CONSTRUCTED PROPERTY.**—In the case of any self-constructed property, the term “qualified progress expenditures” means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

(B) **NONSELF-CONSTRUCTED PROPERTY.**—In the case of nonself-constructed property, the term “qualified progress expenditures” means the amount paid during the taxable year to another person for the construction of such property.

(4) **OTHER DEFINITIONS.**—For purposes of this subsection—

(A) **SELF-CONSTRUCTED PROPERTY.**—The term “self-constructed property” means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

(B) **NONSELF-CONSTRUCTED PROPERTY.**—The term “nonself-constructed property” means property which is not self-constructed property.

(C) **CONSTRUCTION, ETC.**—The term “construction” includes reconstruction and erection, and the term “constructed” includes reconstructed and erected.

(D) **ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY TO BE TAKEN INTO ACCOUNT.**—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

(5) **ELECTION.**—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

(j) **COORDINATION WITH OTHER CREDITS.**—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.

(k) **TERMINATION.**—This section shall not apply with respect to any qualified investment made after December 31, 2011.

(l) **NATIONAL LIMITATION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this section, the term “qualifying advanced clean coal technology facility” shall include such a facility only to the extent that such facility is allocated a portion of the national megawatt limitation under this subsection.

(2) **NATIONAL MEGAWATT LIMITATION.**—The national megawatt limitation under this subsection is 7,500 megawatts.

(3) **ALLOCATION OF LIMITATION.**—The national megawatt limitation shall be allocated by the Secretary under rules pre-

scribed by the Secretary. Not later than 6 months after the date of enactment of this subsection, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(A) to limit which facility qualifies as “qualified advanced clean coal technology” in subsection (c) to particular facilities, a portion of particular facilities, or a portion of the production from particular facilities, so that when all such facilities (or portions thereof) are placed in service over the ten year period in section (k), the combination of facilities approved for tax credits (and/or portions of facilities approved for tax credits) will not exceed a combined capacity of 7,500 megawatts;

(B) to provide a certification process in consultation with the Secretary of Energy under subsection (g) that will approve and allocate the 7,500 megawatts of available tax credits authority—

(i) to encourage that facilities with the highest thermal efficiencies and environmental performance be placed in service as soon as possible;

(ii) to allocate credits to taxpayers that have a definite and credible plan for placing into commercial operation a qualifying advanced clean coal technology facility, including—

(I) a site,

(II) contractual commitments for procurement and construction,

(III) filings for all necessary preconstruction approvals,

(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

(V) such other factors that the Secretary shall determine are appropriate;

(iii) to allocate credits to a portion of a facility (or a portion of the production from a facility) if the Secretary determines that such an allocation should maximize the amount of efficient production encouraged with the available tax credits;

(C) to set progress requirements and conditional approvals so that credits for approved projects that become unlikely to meet the necessary conditions that can be reallocated by the Secretary to other projects;

(D) to reallocate credits that are not allocated to 1 technology described in clauses (i) through (iv) of subsection (c)(1)(A) because an insufficient number of qualifying facilities requested credits for one technology, to another technology described in another subparagraph of subsection (c) in order to maximize the amount of energy efficient production encouraged with the available tax credits; and

(E) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and recordkeeping within a reasonable period after their discovery, taking into account the availability of regu-

lations and other administrative guidance from the Secretary.

SEC. 49. AT-RISK RULES.

(a) GENERAL RULE.—

(1) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.—

(A) * * *

* * * * *

(C) CREDIT BASE DEFINED.—For purposes of this paragraph, the term “credit base” means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property, [and]

(iii) the amortizable basis of any qualified timber property[.], and

(iv) the portion of the basis of any qualifying advanced clean coal technology facility attributable to any qualified investment (as defined by section 48A(c)).

* * * * *

SEC. 50. OTHER SPECIAL RULES.

(a) RECAPTURE IN CASE OF DISPOSITIONS, ETC.—

(1) * * *

* * * * *

(4) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—Paragraphs (1) [and (2)], (2), and (6) shall not apply to—

(A) * * *

* * * * *

(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITY.—For purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following shall apply:

(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology facility (as defined by section 48A(b)(1)) multiplied by a fraction whose numerator is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology facility disposed of, and whose denominator is the total number of years over which such facility would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology facility property shall be treated as a year of remaining depreciation.

(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology facility under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be

substituted in lieu of the amount described in such paragraph (2).

(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology facility.

* * * * *

(c) BASIS ADJUSTMENT TO INVESTMENT CREDIT PROPERTY.—

(1) * * *

* * * * *

(6) SPECIAL RULE FOR QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITIES.—Paragraphs (1) and (2) shall not apply to any property with respect to the credit determined under section 48A.

* * * * *

Subpart G—Credit Against Regular Tax for Prior Year Minimum Tax Liability

* * * * *

SEC. 53. CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY.

(a) * * *

* * * * *

(d) DEFINITIONS.—For purposes of this section—

(1) NET MINIMUM TAX.—

(A) * * *

(B) CREDIT NOT ALLOWED FOR EXCLUSION PREFERENCES.—

(i) * * *

* * * * *

(iii) SPECIAL RULE.—The adjusted net minimum tax for the taxable year shall be increased by the amount of the credit not allowed under section 29 (relating to credit for producing fuel from a nonconventional source) solely by reason of the application of section 29(b)(6)(B), or not allowed under section 30 solely by reason of the application of [section 30(b)(3)(B)] *section 30(b)(2)(B)*.

* * * * *

PART VI—ALTERNATIVE MINIMUM TAX

* * * * *

SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.

(a) * * *

* * * * *

(c) REGULAR TAX.—

(1) * * *

(2) CROSS REFERENCES.—

For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 26(a), 29(b)(6), [30(b)(3)] 30(b)(2) and 38(c).

* * * * *

SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

(a) **ADJUSTMENTS APPLICABLE TO ALL TAXPAYERS.**—In determining the amount of the alternative minimum taxable income for any taxable year the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) **DEPRECIATION.**—

(A) * * *

(B) **EXCEPTION FOR CERTAIN PROPERTY.**—This paragraph shall not apply to property described in paragraph (1), (2), (3), or (4) of section 168(f) *or in clause (ii) or (iii) of section 168(e)(3)(C) or in clause (iii) of section 168(e)(3)(D).*

* * * * *

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) **GENERAL RULE.**—For purposes of this part, the items of tax preference determined under this section are—

(1) * * *

(2) **INTANGIBLE DRILLING COSTS.**—

(A) * * *

* * * * *

(E) **EXCEPTION FOR INDEPENDENT PRODUCERS.**—In the case of any oil or gas well—

(i) * * *

(ii) **LIMITATION ON BENEFIT.**—The reduction in alternative minimum taxable income by reason of clause (i) for any taxable year shall not exceed 40 percent (30 percent in case of taxable years beginning in 1993) of the alternative minimum taxable income for such year determined without regard to clause (i) and the alternative tax net operating loss deduction under section 56(a)(4). *The preceding sentence shall not apply to taxable years beginning after December 31, 2001, and before January 1, 2005.*

* * * * *

Subchapter B—Computation of Taxable Income

* * * * *

PART IV—EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

* * * * *

Subpart A—Private Activity Bonds

Sec. 141. Private activity bond; qualified bond

* * * *

Sec. 141A. Treatment of government-owned electric output facilities.

* * * *

SEC. 141. PRIVATE ACTIVITY BOND; QUALIFIED BOND.

(a) * * *

* * * *

(c) PRIVATE LOAN FINANCING TEST.—

(1) * * *

(2) EXCEPTION FOR TAX ASSESSMENT, ETC., LOANS.—For purposes of paragraph (1), a loan is described in this paragraph if such loan—

(A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function, **[or]**

(B) is a nonpurpose investment (within the meaning of section 148(f)(6)(A)) **[.],** or

(C) arises from a transaction described in section 148(b)(4).

(d) CERTAIN ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT PROPERTY TREATED AS PRIVATE ACTIVITY BONDS

(1) * * *

* * * *

(5) SPECIAL RULES.—In the case of a bond which is a private activity bond solely by reason of this subsection (*except in the case of an electric output facility that is a distribution facility*)—

(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

(B) paragraph (8) of section 142(a) shall be applied as if it did not contain “local”.

* * * *

SEC. 141A. TREATMENT OF GOVERNMENT-OWNED ELECTRIC OUTPUT FACILITIES.

(a) EXCEPTIONS FROM PRIVATE BUSINESS USE LIMITATIONS WHERE OPEN ACCESS REQUIREMENTS MET.—

(1) GENERAL RULE.—For purposes of this part, the term “private business use” shall not include—

(A) any permitted open access activity by a governmental unit with respect to an electric output facility owned by such unit, or

(B) any permitted sale of electricity by a governmental unit which is generated at an existing generation facility owned by such unit.

(2) PERMITTED OPEN ACCESS ACTIVITY.—For purposes of this section—

(A) IN GENERAL.—The term “permitted open access activity” means any activity meeting the open access requirements of any of the following clauses with respect to such electric output facility:

(i) *TRANSMISSION AND ANCILLARY FACILITY.*—In the case of a transmission facility or a facility providing ancillary services, the provision of transmission service and ancillary services meets the open access requirements of this clause only if such services are provided on a nondiscriminatory open access basis—

(I) pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff, or

(II) under a regional transmission organization agreement approved by FERC.

(ii) *DISTRIBUTION FACILITIES.*—In the case of a distribution facility, the delivery of electric energy meets the open access requirements of this clause only if such delivery is made on a nondiscriminatory open access basis.

(iii) *GENERATION FACILITIES.*—In the case of a generation facility, the delivery of electric energy generated by such facility meets the open access requirements of this clause only if—

(I) such facility is directly connected to distribution facilities owned by the governmental unit which owns the generation facility, and

(II) such distribution facilities meet the open access requirements of clause (ii).

(B) *SPECIAL RULES.*—

(i) *VOLUNTARILY FILED TARIFFS.*—Subparagraph (A)(i)(I) shall apply in the case of a voluntarily filed tariff only if the governmental unit files a report with FERC within 90 days after the date of the enactment of this section relating to whether or not such governmental unit will join a regional transmission organization.

(ii) *CONTROL OF TRANSMISSION FACILITIES BY REGIONAL TRANSMISSION ORGANIZATION.*—A governmental unit shall be treated as meeting the open access requirements of subparagraph (A)(i) if a regional transmission organization controls the transmission facilities.

(iii) *ERCOT UTILITY.*—References to FERC in subparagraph (A) shall be treated as references to the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

(3) *PERMITTED SALE.*—For purposes of this subsection—

(A) *IN GENERAL.*—The term “permitted sale” means—

(i) any sale of electricity to an on-system purchaser if the seller meets the open access requirements of paragraph (2) with respect to all distribution and transmission facilities (if any) owned by such seller, and

(ii) subject to subparagraphs (B) and (C), any sale of electricity to a wholesale native load purchaser, and any load loss sale, if—

(I) the seller meets the open access requirements of paragraph (2) with respect to all transmission facilities (if any) owned by such seller, or

(II) in any case in which the seller does not own any transmission facilities, all persons providing transmission services to the seller's wholesale native load purchasers meet the open access requirements of paragraph (2) with respect to all transmission facilities owned by such persons.

(B) **LIMITATION ON SALES TO WHOLESALE NATIVE LOAD PURCHASERS.**—A sale to a wholesale native load purchaser shall be treated as a permitted sale only to the extent that—

(i) such purchaser resells the electricity directly at retail to persons within the purchaser's distribution area, or

(ii) such electricity is resold by such purchaser through one or more wholesale purchasers (each of whom as of June 30, 2000, was a party to a requirements contract or a firm power contract described in paragraph (5)(B)(ii)) to retail purchasers in the ultimate wholesale purchaser's distribution area.

(C) **LOAD LOSS SALES.**—

(i) **IN GENERAL.**—The term "load loss sale" means any sale at wholesale to the extent that—

(I) the aggregate sales at wholesale during the recovery period does not exceed the load loss mitigation sales limit for such period, and

(II) the aggregate sales at wholesale during the first calendar year after the recovery period does not exceed the excess carried under clause (iv) to such year.

(ii) **LOAD LOSS MITIGATION SALES LIMIT.**—For purposes of clause (i), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

(iii) **ANNUAL LOAD LOSS.**—A governmental unit's annual load loss for each year of the recovery period is the amount (if any) by which—

(I) the megawatt hours of electric energy sold during such year to wholesale native load purchasers which do not constitute private business use are less than

(III) the megawatt hours of electric energy sold during the base year to wholesale native load purchasers which do not constitute private business use.

The annual load loss for any year shall not exceed the portion of the amount determined under the preceding sentence which is attributable to open access requirements.

(iv) **CARRYOVERS.**—If the limitation under clause (i) for the recovery period exceeds the aggregate sales during such period which are taken into account under clause (i), such excess (but not more than 10 percent of

such limitation) may be carried over to the first calendar year following the recovery period.

(v) *RECOVERY PERIOD.*—The recovery period is the 7-year period beginning with the start-up year.

(vi) *START-UP YEAR.*—The start-up year is the calendar year which includes the date of the enactment of this section or, if later, at the election of the governmental unit—

(I) the first year that the governmental unit offers nondiscriminatory open transmission access, or

(II) the first year in which at least 10 percent of the governmental unit's wholesale customers' aggregate retail native load is open to retail competition.

(4) *ON-SYSTEM PURCHASER.*—For purposes of this section, the term “on-system purchaser” means any person whose electric equipment is directly connected with any transmission or distribution facility owned by the governmental unit owning the existing generation facility if—

(A) such person—

(i) purchases electric energy from such governmental unit at retail, and

(ii)(I) was within such unit's distribution area at the close of the base year or

(II) is a person as to whom the governmental unit has a statutory service obligation, or

(B) is a wholesale native load purchaser from such governmental unit.

(5) *WHOLESALE NATIVE LOAD PURCHASER.*—For purposes of this section—

(A) *IN GENERAL.*—The term “wholesale native load purchaser” means a wholesale purchaser as to whom the governmental unit had—

(i) a statutory service obligation at wholesale at the close of the base year, or

(ii) an obligation at the close of the base year under a requirements or firm sales contract if, as of June 30, 2000, such contract had been in effect for (or had an initial term of) at least 10 years.

(B) *PERMITTED SALES UNDER EXISTING CONTRACTS.*—A private business use sale during any year to a wholesale native load purchaser (other than a person to whom the governmental unit had a statutory service obligation) under a contract shall be treated as a permitted sale by reason of being a load loss sale only to the extent that the private business use sales under the contract during such year exceed the lesser of—

(i) the private business use sales under the contract during the base year, or

(ii) the maximum private business use sales which would (but for this section) be permitted without causing the bonds to be private activity bonds.

This subparagraph shall only apply to the extent that the sale is allocable to bonds issued before the date of the en-

actment of this section (or bonds issued to refund such bonds).

(6) SPECIAL RULES.—

(A) TIME OF SALE RULE.—For purposes of paragraphs (3)(C)(iii) and (5)(B), the determination of whether a sale after the date of the enactment of this section is a private business use shall be made with regard to this section.

(B) JOINT ACTION AGENCIES.—To the extent provided in regulations, a joint action agency, or a member of (or a wholesale native load purchaser from) a joint action agency, which is entitled to make a sale described in subparagraph (A) or (B) in a year, may transfer the entitlement to make that sale to the member (or purchaser), or the joint action agency, respectively.

(b) CERTAIN BONDS FOR TRANSMISSION AND DISTRIBUTION FACILITIES NOT TAX EXEMPT.—

(1) IN GENERAL.—Section 103 shall not apply to any bond issued on or after the date of the enactment of this section if any portion of the proceeds of the issue of which such bond is a part is used (directly or indirectly) to finance—

(A) any electric transmission facility, or

(B) any start-up electric utility distribution facility.

(2) EXCEPTIONS RELATING TO TRANSMISSION FACILITIES.—Paragraph (1)(A) shall not apply to any bond issued to finance—

(A) any repair of a transmission facility in service on the date of the enactment of this section, so long as the repair does not—

(i) increase the voltage level of such facility over its level at the close of the base year, or

(ii) increase the thermal load limit of such facility by more than 3 percent over such limit at the close of the base year,

(B) any qualifying upgrade of an electric transmission facility in service on the date of the enactment of this section, or

(C) any transmission facility necessary to comply with an obligation under a shared or reciprocal transmission agreement in effect on such date.

(3) EXCEPTION FOR LOCAL ELECTRIC TRANSMISSION FACILITY.—For purposes of this subsection—

(A) IN GENERAL.—In the case of a governmental unit which owns distribution facilities, paragraph (1)(A) shall not apply to any bond issued to finance an electric transmission facility owned by such governmental unit and located within such governmental unit's distribution area, but only to the extent such facility is, or will be, necessary to supply electricity to serve the retail native load, or wholesale native load, of such governmental unit or of 1 or more other governmental units owning distribution facilities which are directly connected to such electric transmission facility.

(B) RETAIL LOAD.—The term “retail load” means, with respect to a governmental unit, the electric load of end-users in the distribution area of the governmental unit.

(C) *WHOLESALE NATIVE LOAD.*—The term “wholesale native load” means—

(i) the retail load of such unit’s wholesale native load purchasers (or of an ultimate wholesale purchaser described in subsection (a)(3)(B)(ii)), and

(ii) the electric load of purchasers (not described in clause (i)) under wholesale requirements contracts which—

(I) do not constitute private business use (determined without regard to this section), and

(II) were in effect in the base year.

(D) *NECESSARY TO SERVE LOAD.*—For purposes of determining whether a transmission facility is, or will be, necessary to supply electricity to retail native load or wholesale native load—

(i) the governmental unit’s available transmission rights shall be taken into account,

(ii) electric reliability standards or requirements of national or regional reliability organizations, regional transmission organizations and the Electric Reliability Council of Texas shall be taken into account, and

(iii) transmission, siting and construction decisions of regional transmission organizations and State and Federal regulatory and siting agencies, after a proceeding that provides for public input, shall be presumptive evidence regarding whether transmission facilities are necessary to serve native load.

(E) *QUALIFYING UPGRADE.*—The term “qualifying upgrade” means an improvement or addition to transmission facilities of the governmental unit in service on the date of the enactment of this section which—

(i) is ordered or approved by a regional transmission organization or by a State regulatory or siting agency, after a proceeding that provides for public input, and

(ii) is, or will be, necessary to supply electricity to serve the retail native load, or wholesale native load, of such governmental unit or of one or more governmental units owning distribution facilities which are directly connected to such transmission facility.

(4) *START-UP ELECTRIC UTILITY DISTRIBUTION FACILITY DEFINED.*—For purposes of this subsection, the term “start-up electric utility distribution facility” means any distribution facility to provide electric service for sale to the public if such facility is placed in service—

(A) by a governmental unit that did not operate an electric utility on the date of the enactment of this section, and

(B) during the first 10 years after the date such governmental unit begins operating an electric utility.

A governmental unit is treated as having operated an electric utility on the date of the enactment of this section if it operates electric output facilities which were (on such date) operated by another governmental unit to provide electric service for sale to the public.

(5) *EXCEPTION FOR REFUNDING BONDS.*—

(A) *IN GENERAL.*—Paragraph (1) shall not apply to any eligible refunding bond.

(B) *ELIGIBLE REFUNDING BOND.*—For purposes of subparagraph (A), the term “eligible refunding bond” means any bond (or series of bonds) issued to refund any bond issued before the date of the enactment of this section if the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue.

(c) *DEFINITIONS; SPECIAL RULES.*—For purposes of this section—

(1) *BASE YEAR.*—The term “base year” means—

(A) the calendar year preceding the start-up year, or

(B) at the election of the governmental unit, the second or third calendar years preceding the start-up year.

(2) *DISTRIBUTION AREA.*—The term “distribution area” means the area in which a governmental unit owns distribution facilities.

(3) *ELECTRIC OUTPUT FACILITY.*—The term “electric output facility” means an output facility that is an electric generation, transmission, or distribution facility.

(4) *DISTRIBUTION FACILITY.*—The term “distribution facility” means an electric output facility that is not a generation or transmission facility.

(5) *TRANSMISSION FACILITY.*—The term “transmission facility” means an electric output facility (other than a generation facility) that operates at an electric voltage of 69 kV or greater. To the extent provided in regulations, such term includes any output facility that FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act (as in effect on the date of the enactment of this section).

(6) *EXISTING GENERATION FACILITY.*—

(A) *IN GENERAL.*—The term “existing generation facility” means any electric generation facility if—

(i) such facility is originally placed in service on or before the date of enactment of this Act and is owned by any governmental unit on such date, or

(ii) such facility is originally placed in service after such date if the construction of the facility commenced before June 1, 2000, and such facility is owned by any governmental unit when it is placed in service.

(B) *DENIAL OF TREATMENT TO EXPANSIONS.*—Such term shall not include any facility to the extent the generating capacity of such facility as of any date is 3 percent above the greater of its nameplate or rated capacity as of the date of the enactment of this section (or, in the case of a facility described in subparagraph (A)(ii), the date that the facility is placed in service).

(7) *REGIONAL TRANSMISSION ORGANIZATION.*—The term “regional transmission organization” includes an independent system operator.

(8) *FERC.*—The term “FERC” means the Federal Energy Regulatory Commission.

(9) *GOVERNMENT-OWNED FACILITY.*—An electric transmission facility shall be treated as owned by a governmental unit as of any date to the extent that—

(A) *such unit acquired (before the base year) long-term firm transmission capacity (as determined under regulations) of such facility for the purposes of serving customers to which such unit had at the close of the base year—*

(i) a statutory service obligation, or

(ii) an obligation under a requirements contract, and

(B) such unit holds such capacity as of such date.

(10) **STATUTORY SERVICE OBLIGATION.**—*The term “statutory service obligation” means an obligation under State or Federal law (exclusive of an obligation arising solely under a contract entered into with a person) to provide electric distribution services or electric sales services, as provided in such law.*

(11) **CONTRACT MODIFICATIONS.**—*A material modification of a contract shall be treated as a new contract.*

(d) **ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILITIES.**—

(1) **IN GENERAL.**—*At the election of a governmental unit, section 103(a) shall not apply to any bond issued by or on behalf of such unit after the date of such election if any portion of the proceeds of the issue of which such bond is a part are used to provide any electric output facilities. Such an election, once made, shall be irrevocable.*

(2) **OTHER EFFECTS OF ELECTION.**—*During the period that the election under paragraph (1) is in effect with respect to a governmental unit, the term “private activity bond” shall not include—*

(A) any bond issued by such unit before the date of the enactment of this section to provide an electric output facility if, as of the date of the election, such bond was not a private activity bond, and

(B) any bond to which paragraph (1) does not apply by reason of paragraph (3).

(3) **EXCEPTIONS FOR CERTAIN PROPERTY.**—

(A) **IN GENERAL.**—*Paragraph (1) shall not apply to any bond issued to provide property owned by a governmental unit if such property is—*

(i) any qualifying transmission facility,

(ii) any qualifying distribution facility,

(iii) any facility necessary to meet Federal or State environmental requirements applicable to an existing generation facility owned by the governmental unit as of the date of the election,

(iv) any property to repair any existing generation facility owned by the governmental unit as of the date of the election,

(v) any qualified facility (as defined in section 45(c)(3)) producing electricity from any qualified energy resource (as defined in section 45(c)(1)), and

(vi) any energy property (as defined in section 48(a)(3)) placed in service during a period that the energy percentage under section 48(a) is greater than zero.

(B) **LIMITATION ON USE BY NONGOVERNMENTAL PERSONS.**—*Subparagraph (A) shall not apply to any property constructed, acquired or financed for a principal purpose of*

providing the facility (or the output thereof) to nongovernmental persons.

(4) **DEFINITIONS.**—*For purposes of this subsection—*

(A) **QUALIFYING DISTRIBUTION FACILITY.**—*The term “qualifying distribution facility” means a distribution facility meeting the open access requirements of subsection (a)(2)(A)(ii).*

(B) **QUALIFYING TRANSMISSION FACILITY.**—*The term “qualifying transmission facility” means a local transmission facility (as defined in subsection (b)(3)) meeting the open access requirements of subsection (a)(2)(A)(i).*

(5) **EFFECT OF ELECTION.**—

(A) **IN GENERAL.**—*An election under paragraph (1) shall be binding on any successor in interest to, or any related party with respect to, the electing governmental unit. For purposes of this paragraph, a governmental unit shall be treated as related to another governmental unit if it is a member of the same controlled group (as determined under regulations).*

(B) **TREATMENT OF ELECTING GOVERNMENTAL UNIT.**—*A governmental unit which makes an election under paragraph (1) shall be treated for purposes of section 141 as a person—*

(i) which is not a governmental unit, and

(ii) which is engaged in a trade or business,

with respect to its purchase of electricity generated by an electric output facility placed in service after the date of such election if such purchase is under a contract executed after such date.

* * * * *

Subpart B—Requirements Applicable to All State and Local Bonds

* * * * *

SEC. 148. ARBITRAGE.

(a) * * *

(b) **HIGHER YIELDING INVESTMENTS.**—*For purposes of this section—*

(1) * * *

* * * * *

(4) **EXCEPTION FOR CERTAIN PREPAYMENTS TO ENSURE NATURAL GAS SUPPLY.**—*The term “investment property” shall not include any prepayment for the purpose of obtaining a supply of a natural gas—*

(A) at least 85 percent of which is to be used in the State in which the issuer is located, and

(B) which is to be used in a business of one or more utilities each of which is owned and operated by a State or local government, any political subdivision or instrumentality thereof, or any governmental unit acting for or on behalf of such a utility.

* * * * *

**PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS
AND CORPORATIONS**

Sec. 161. Allowance of deductions.

* * * * *

Sec. 179B. Energy property deduction.

*Sec. 179C. Deduction for qualified energy management devices and
retrofitted meters.*

* * * * *

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) * * *

* * * * *

(e) **CLASSIFICATION OF PROPERTY.**—For purposes of this section—

(1) * * *

* * * * *

(3) **CLASSIFICATION OF CERTAIN PROPERTY.**—

(A) **3-YEAR PROPERTY.**—The term “3-year property” includes—

(i) any race horse which is more than 2 years old at the time it is placed in service,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service,
[and]

(iii) any qualified rent-to-own property[.], and

(iv) any qualified energy management device.

* * * * *

(C) **7-YEAR PROPERTY.**—The term “7-year property” includes—

(i) any railroad track, [and]

(ii) any natural gas gathering line,

(iii) any property used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components, and

[(ii)] (iv) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) **10-YEAR PROPERTY.**—The term “10-year property” includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),
[and]

(ii) any tree or vine bearing fruit or nuts[.], and

(iii) any natural gas distribution line.

* * * * *

(g) **ALTERNATIVE DEPRECIATION SYSTEM FOR CERTAIN PROPERTY.**—

(1) * * *

* * * * *

(3) **SPECIAL RULES FOR DETERMINING CLASS LIFE.**—

(A) * * *

(B) **SPECIAL RULE FOR CERTAIN PROPERTY ASSIGNED TO CLASSES.**—For purposes of paragraph (2), in the case of

property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5
(B)(iii)	9.5
(C)(i)	10
(C)(ii)	10
(C)(iii)	10
(D)(i)	15
(D)(ii)	20
(D)(iii)	20
(E)(i)	24
(E)(ii)	24
(E)(iii)	20

(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * *

(15) *QUALIFIED ENERGY MANAGEMENT DEVICE.*—The term “qualified energy management device” means any qualified energy management device as defined in section 179C(c) which is placed in service by a taxpayer who is a supplier of electric energy or natural gas or a provider of electric energy or natural gas services.

(16) *NATURAL GAS GATHERING LINE.*—The term “natural gas gathering line” means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, or

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

(j) PROPERTY ON INDIAN RESERVATIONS.—

(1) * * *

* * * * *

(8) *TERMINATION.*—This subsection shall not apply to property placed in service after December 31, 2003. The preceding sentence shall be applied by substituting “December 31, 2006” for “December 31, 2003” in the case of property placed in service as part of a facility for—

(A) the generation or transmission of electricity (including from any qualified energy resource, as defined in section 45(c)),

(B) an oil or gas well,

(C) the transmission or refining of oil or gas, or
 (D) the production of any qualified fuel (as defined in
 section 29(c)).

* * * * *

SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) * * *

(b) NET OPERATING CARRYBACKS AND CARRYOVERS.—

(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

(A) * * *

* * * * *

(H) LOSSES ON OPERATING MINERAL INTERESTS OF OIL
 AND GAS PRODUCERS.—In the case of a taxpayer which has
 an eligible oil and gas loss (as defined in subsection (j)) for
 a taxable year, such eligible oil and gas loss shall be a net
 operating loss carryback to each of the 5 taxable years pre-
 ceding the taxable year of such loss.

* * * * *

(j) ELIGIBLE OIL AND GAS LOSS.—For purposes of this section—

(1) IN GENERAL.—The term “eligible oil and gas loss” means
 the lesser of—

(A) the amount which would be the net operating loss for
 the taxable year if only income and deductions attributable
 to operating mineral interests (as defined in section 614(d))
 in oil and gas wells are taken into account, or

(B) the amount of the net operating loss for such taxable
 year.

(2) COORDINATION WITH SUBSECTION (b)(2).—For purposes of
 applying subsection (b)(2), an eligible oil and gas loss for any
 taxable year shall be treated in a manner similar to the manner
 in which a specified liability loss is treated.

(3) ELECTION.—Any taxpayer entitled to a 5-year carryback
 under subsection (b)(1)(H) from any loss year may elect to have
 the carryback period with respect to such loss year determined
 without regard to subsection (b)(1)(H).

[(j)] (k) CROSS REFERENCES.—

(1) * * *

* * * * *

SEC. 179. ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * *

(5) LIMITATION FOR SMALL BUSINESS REFINERS.—

(A) IN GENERAL.—In the case of a small business refiner
 electing to expense qualified costs, in lieu of the dollar limi-
 tations in paragraph (1), the limitation on the aggregate
 costs which may be taken into account under subsection (a)
 for any taxable year shall not exceed 75 percent of the
 qualified costs.

(B) QUALIFIED COSTS.—For purposes of this paragraph,
 the term “qualified costs” means costs paid or incurred by

a small business refiner for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(C) SMALL BUSINESS REFINER.—For purposes of this paragraph, the term “small business refiner” means, with respect to any taxable year, a refiner which, within the refining operations of the business, employs not more than 1,500 employees on business days during such taxable year performing services in the refining operations of such businesses and has an average total capacity of 155,000 barrels per day or less.

SEC. 179A. DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.

(a) * * *

(b) LIMITATIONS.—

(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—

(A) * * *

(B) PHASEOUT.—In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2001, the limit otherwise applicable under subparagraph (A) shall be reduced by—

(i) 25 percent in the case of property placed in service in calendar year **[2002]** 2005,

(ii) 50 percent in the case of property placed in service in calendar year **[2003]** 2006, and

(iii) 75 percent in the case of property placed in service in calendar year **[2004]** 2007.

(c) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY DEFINED.—For purposes of this section—

(1) * * *

* * * * *

(3) EXCEPTION FOR QUALIFIED BATTERY ELECTRIC VEHICLES.—The term “qualified clean-fuel vehicle property” does not include any qualified battery electric vehicle (as defined in section 30(c)).

* * * * *

(f) TERMINATION.—This section shall not apply to any property placed in service after December 31, **[2004]** 2007.

SEC. 179B. DEDUCTION FOR ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.

(a) ALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to energy efficient commercial building property expenditures made by a taxpayer for the taxable year.

(2) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient commercial building property expenditures taken into account under paragraph (1) shall not exceed an amount equal to the product of—

(A) \$2.25, and

(B) the square footage of the building with respect to which the expenditures are made.

(3) YEAR DEDUCTION ALLOWED.—The deduction under paragraph (1) shall be allowed for the taxable year in which the building is placed in service.

(b) *ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY EXPENDITURES.*—For purposes of this section, the term “energy efficient commercial building property expenditures” means an amount paid or incurred for energy efficient commercial building property installed on or in connection with new construction or reconstruction of property—

- (1) for which depreciation is allowable under section 167,
- (2) which is located in the United States, and
- (3) the construction or erection of which is completed by the taxpayer.

Such property includes all residential rental property, including low-rise multifamily structures and single family housing property which is not within the scope of Standard 90.1–1999 (described in subsection (c)). Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

(c) *ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY.*—For purposes of subsection (b)—

(1) *IN GENERAL.*—The term “energy efficient commercial building property” means any property which reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a reference building which meets the requirements of Standard 90.1–1999 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America using methods of calculation under paragraph (2) and certified by qualified professionals as provided under subsection (f).

(2) *METHODS OF CALCULATION.*—The Secretary, in consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, taking into consideration the provisions of the 1998 California Nonresidential ACM Manual. These procedures shall meet the following requirements:

(A) In calculating tradeoffs and energy performance, the regulations shall prescribe the costs per unit of energy and power, such as kilowatt hour, kilowatt, gallon of fuel oil, and cubic foot or Btu of natural gas, which may be dependent on time of usage.

(B) The calculational methodology shall require that compliance be demonstrated for a whole building. If some systems of the building, such as lighting, are designed later than other systems of the building, the method shall provide that either—

- (i) the expenses taken into account under subsection (a) shall not occur until the date designs for all energy-using systems of the building are completed,
- (ii) the energy performance of all systems and components not yet designed shall be assumed to comply minimally with the requirements of such Standard 90.1–1999, or
- (iii) the expenses taken into account under subsection (a) shall be a fraction of such expenses based on the

performance of less than all energy-using systems in accordance with subparagraph (C).

(C) The expenditures in connection with the design of subsystems in the building, such as the envelope, the heating, ventilation, air conditioning and water heating system, and the lighting system shall be allocated to the appropriate building subsystem based on system-specific energy cost savings targets in regulations promulgated by the Secretary of Energy which are equivalent, using the calculation methodology, to the whole building requirement of 50 percent savings.

(D) The calculational methods under this subparagraph need not comply fully with section 11 of such Standard 90.1-1999.

(E) The calculational methods shall be fuel neutral, such that the same energy efficiency features shall qualify a building for the deduction under this subsection regardless of whether the heating source is a gas or oil furnace or an electric heat pump.

(F) The calculational methods shall provide appropriate calculated energy savings for design methods and technologies not otherwise credited in either such Standard 90.1-1999 or in the 1998 California Nonresidential ACM Manual, including the following:

- (i) Natural ventilation.
- (ii) Evaporative cooling.
- (iii) Automatic lighting controls such as occupancy sensors, photocells, and timeclocks.
- (iv) Daylighting.
- (v) Designs utilizing semi-conditioned spaces that maintain adequate comfort conditions without air conditioning or without heating.
- (vi) Improved fan system efficiency, including reductions in static pressure.
- (vii) Advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors.
- (viii) The calculational methods may take into account the extent of commissioning in the building, and allow the taxpayer to take into account measured performance that exceeds typical performance.

(3) COMPUTER SOFTWARE.—

(A) IN GENERAL.—Any calculation under this subsection shall be prepared by qualified computer software.

(B) QUALIFIED COMPUTER SOFTWARE.—For purposes of this paragraph, the term “qualified computer software” means software—

- (i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,
- (ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

(iii) which provides a notice form which summarizes the energy efficiency features of the building and its projected annual energy costs.

(d) **ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.**—In the case of energy efficient commercial building property installed on or in public property, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the public entity which is the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

(e) **NOTICE TO OWNER.**—The qualified individual shall provide an explanation to the owner of the building regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under subsection (c)(3)(B)(iii).

(f) **CERTIFICATION.**—The Secretary, in consultation with the Secretary of Energy, shall establish requirements for certification and compliance procedures similar to the procedures under section 45H(d).

(g) **BASIS REDUCTION.**—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by subsection (a).

(h) **TERMINATION.**—This section shall not apply to property placed in service after December 31, 2006.

SEC. 179C. DEDUCTION FOR QUALIFIED ENERGY MANAGEMENT DEVICES AND RETROFITTED METERS.

(a) **ALLOWANCE OF DEDUCTION.**—In the case of a taxpayer who is a supplier of electric energy or natural gas or a provider of electric energy or natural gas services, there shall be allowed as a deduction an amount equal to the cost of each qualified energy management device placed in service during the taxable year.

(b) **MAXIMUM DEDUCTION.**—The deduction allowed by this section with respect to each qualified energy management device shall not exceed \$30.

(c) **QUALIFIED ENERGY MANAGEMENT DEVICE.**—The term “qualified energy management device” means any tangible property to which section 168 applies if such property is a meter or metering device—

(1) which is acquired and used by the taxpayer to enable consumers to manage their purchase or use of electricity or natural gas in response to energy price and usage signals, and

(2) which permits reading of energy price and usage signals on at least a daily basis.

(d) **PROPERTY USED OUTSIDE THE UNITED STATES NOT QUALIFIED.**—No deduction shall be allowed under subsection (a) with respect to property which is used predominantly outside the United States or with respect to the portion of the cost of any property taken into account under section 179.

(e) **BASIS REDUCTION.**—

(1) **IN GENERAL.**—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by subsection (a).

(2) **ORDINARY INCOME RECAPTURE.**—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property that is of a character subject

to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

* * * * *

SEC. 196. DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.

(a) * * *

* * * * *

(c) **QUALIFIED BUSINESS CREDITS.**—For purposes of this section, the term “qualified business credits” means—

(1) * * *

* * * * *

(9) the new markets tax credit determined under section 45D(a), **[and]**

(10) the small employer pension plan startup cost credit determined under section 45E(a)**[.], and**

(11) *the new energy efficient home credit determined under section 45H.*

* * * * *

PART IX—ITEMS NOT DEDUCTABLE

* * * * *

SEC. 263. CAPITAL EXPENDITURES.

(a) **GENERAL RULE.**—No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) * * *

* * * * *

(G) expenditures for which a deduction is allowed under section 179; **[or]**

(H) expenditures for which a deduction is allowed under section 179A**[.],**

(I) *expenditures for which a deduction is allowed under section 179B, or*

(J) *expenditures for which a deduction is allowed under section 179C.*

* * * * *

(j) **DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.**—

(1) **IN GENERAL.**—Notwithstanding subsection (a), a taxpayer may elect to treat delay rental payments incurred in connection with the development of oil or gas within the United States (as defined in section 638) as payments which are not chargeable to capital account. Any payments so treated shall be allowed as a deduction in the taxable year in which paid or incurred.

(2) **DELAY RENTAL PAYMENTS.**—For purposes of paragraph (1), the term “delay rental payment” means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.

(k) **GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR DOMESTIC OIL AND GAS WELLS.**—Notwithstanding subsection (a), a taxpayer may elect to treat geological and geophysical expenses incurred in

connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) as expenses which are not chargeable to capital account. Any expenses so treated shall be allowed as a deduction in the taxable year in which paid or incurred.

SEC. 263A. CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES.

(a) * * *

* * * *

(c) GENERAL EXCEPTIONS.—

(1) * * *

* * * *

(3) CERTAIN DEVELOPMENT AND OTHER COSTS OF OIL AND GAS WELLS OR OTHER MINERAL PROPERTY.—This section shall not apply to any cost allowable as a deduction under section 263(c), 263(i), 263(j), 263(k), 291(b)(2), 616, or 617.

* * * *

SEC. 280C. CERTAIN EXPENSES FOR WHICH CREDITS ARE ALLOWABLE.

(a) * * *

* * * *

(d) *NEW ENERGY EFFICIENT HOME EXPENSES.*—No deduction shall be allowed for that portion of expenses for a new energy efficient home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45H.

(e) *ENVIRONMENTAL TAX CREDIT.*—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45I(a).

* * * *

Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

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Subpart B—Effects on Corporation

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SEC. 312. EFFECT ON EARNINGS AND PROFITS.

(a) * * *

* * * *

(k) EFFECT OF DEPRECIATION ON EARNINGS AND PROFITS.—

(1) * * *

* * * *

(3) EXCEPTION FOR TANGIBLE PROPERTY.—

(A) * * *

(B) TREATMENT OF AMOUNTS DEDUCTIBLE UNDER SECTION 179 [OR 179A], 179A, 179B, OR 179C.—For purposes of computing the earnings and profits of a corporation, any amount deductible under section 179 [or 179A], 179A, 179B, or 179C shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under section 179 [or 179A], 179A, 179B, or 179C, as the case may be).

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PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

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Subpart B—Effects on Shareholders and Security Holders

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SEC. 355. DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

(a) * * *

* * * * *

(e) RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONNECTION WITH ACQUISITIONS.—

(1) * * *

* * * * *

(3) SPECIAL RULES RELATING TO ACQUISITIONS.—

(A) CERTAIN ACQUISITIONS NOT TAKEN INTO ACCOUNT.—

Except as provided in regulations, the following acquisitions shall not be taken into account in applying paragraph (2)(A)(ii):

(i) The acquisition of stock in any controlled corporation by the distributing corporation.

* * * * *

(v) *The acquisition of stock in any controlled corporation in a qualifying electric transmission transaction (as defined in section 1033(k)).*

* * * * *

Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

* * * * *

Subpart C—Taxable Year for Which Deductions Taken

* * * * *

SEC. 468A. SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) * * *

[(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of—

[(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

[(2) the ruling amount applicable to such taxable year.]

(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

(1) IN GENERAL.—*The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.*

(2) CONTRIBUTIONS AFTER FUNDING PERIOD.—*Notwithstanding any other provision of this section, a taxpayer may pay into the Fund in any taxable year after the last taxable year to which the ruling amount applies. Payments may not be made under the preceding sentence to the extent such payments would cause the assets of the Fund to exceed the nuclear decommissioning costs allocable to the taxpayer's current or former interest in the nuclear powerplant to which the Fund relates. The limitation under the preceding sentence shall be determined by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.*

(c) INCOME AND DEDUCTIONS OF THE TAXPAYER.—

(1) * * *

[(2) DEDUCTION WHEN ECONOMIC PERFORMANCE OCCURS.—In addition to any deduction under subsection (a), there shall be allowable as a deduction for any taxable year the amount of the nuclear decommissioning costs with respect to which economic performance (within the meaning of section 461(h)(2)) occurs during such taxable year.]

(2) DEDUCTION OF NUCLEAR DECOMMISSIONING COSTS.—*In addition to any deduction under subsection (a), nuclear decommissioning costs paid or incurred by the taxpayer during any taxable year shall constitute ordinary and necessary expenses in carrying on a trade or business under section 162.*

(d) RULING AMOUNT.—For purposes of this section—

(1) * * *

(2) RULING AMOUNT.—The term “ruling amount” means, with respect to any taxable year, the amount which the Secretary determines under paragraph (1) to be necessary to—

[(A) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear power plant as the period for which the Fund is in effect bears to the estimated useful life of such nuclear power plant, and]

(A) fund the total nuclear decommissioning costs with respect to such powerplant over the estimated useful life of such powerplant, and

* * * * *

(e) NUCLEAR DECOMMISSIONING RESERVE FUND.—

(1) * * *

* * * * *

(8) *TREATMENT OF FUND TRANSFERS.*—If, in connection with the transfer of the taxpayer's interest in a nuclear powerplant, the taxpayer transfers the Fund with respect to such powerplant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

(B) no amount shall be treated as distributed from such Fund, or be includible in gross income, by reason of such transfer.

(f) *TRANSFERS INTO QUALIFIED FUNDS.*—

(1) *IN GENERAL.*—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear powerplant may transfer into such Fund up to an amount equal to the excess of the total nuclear decommissioning costs with respect to such nuclear powerplant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

(2) *DEDUCTION FOR AMOUNTS TRANSFERRED.*—

(A) *IN GENERAL.*—The deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear powerplant beginning with the taxable year during which the transfer is made.

(B) *DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.*—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

(C) *TRANSFERS OF QUALIFIED FUNDS.*—If—

(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

(ii) such Fund is transferred thereafter, any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferee and not to the transferor. The preceding sentence shall not apply if the transferor is an organization exempt from tax imposed by this chapter.

(D) *SPECIAL RULES.*—

(i) *GAIN OR LOSS NOT RECOGNIZED.*—No gain or loss shall be recognized on any transfer permitted by this subsection.

(ii) *TRANSFERS OF APPRECIATED PROPERTY.*—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall be the adjusted basis of such property.

(3) *NEW RULING AMOUNT REQUIRED.*—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Sec-

retary a new schedule of ruling amounts in connection with such transfer.

(4) *NO BASIS IN QUALIFIED FUNDS.*—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.

[(f)] (g) *NUCLEAR POWER PLANT.*—For purposes of this section, the term “nuclear power plant” includes any unit thereof.

[(g)] (h) *TIME WHEN PAYMENTS DEEMED MADE.*—For purposes of this section, a taxpayer shall be deemed to have made a payment to the Fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2-1/2 months after the close of such taxable year.

* * * * *

Subchapter F—Exempt Organizations

* * * * *

PART I—GENERAL RULE

* * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * *

(c) *LIST OF EXEMPT ORGANIZATIONS.*—The following organizations are referred to in subsection (a):

(1) * * *

* * * * *

(12)(A) * * *

* * * * *

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, [or]

(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987)[.],

(iii) from any open access transaction (other than income received or accrued directly or indirectly from a member), or

(iv) from any nuclear decommissioning transaction.

* * * * *

(E) For purposes of subparagraph (C)—

(i) The term “open access transaction” means any activity which would be a permitted open access activity (as defined in section 141A(a)(2)) if the cooperative were a governmental unit.

(ii) The term “nuclear decommissioning transaction” means—

(I) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning

costs if the transfer is in connection with the transfer of the cooperative's interest in a nuclear powerplant or nuclear powerplant unit,

(II) any distribution from such a trust, fund, or instrument, or

(III) any earnings from such a trust, fund, or instrument.

(F)(i) In the case of a mutual or cooperative electric company, income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(ii) For purposes of clause (i), the term "load loss transaction" means any sale (whether at wholesale or at retail) which would be a load loss sale under rules similar to the rules of section 141A(3)(C).

(iii) A company shall not fail to be treated as a mutual cooperative company for purposes of this paragraph by reason of the treatment under clause (i).

(iv) A rule similar to the rule of this subparagraph shall apply to an organization to which section 1381 does not apply by reason of section 1381(a)(2)(C).

* * * * *

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

* * * * *

SEC. 512. UNRELATED BUSINESS TAXABLE INCOME.

(a) * * *

(b) MODIFICATIONS.—The modifications referred to in subsection (a) are the following:

(1) * * *

* * * * *

(18) TREATMENT OF LOAD LOSS SALES OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (F) thereof.

* * * * *

Subchapter I—Natural Resources

* * * * *

PART I—DEDUCTIONS

* * * * *

SEC. 613A. LIMITATIONS ON PERCENTAGE DEPLETION IN CASE OF OIL AND GAS WELLS.

(a) * * *

* * * * *

(c) EXEMPTION FOR INDEPENDENT PRODUCERS AND ROYALTY OWNERS.—

(1) * * *

* * * * *

(6) OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.—

(A) * * *

* * * * *

(H) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.—The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year beginning after December 31, 1997, and before January 1, **[2002]** 2007.

* * * * *

(d) LIMITATIONS ON APPLICATION OF SUBSECTION (c).—

(1) * * *

* * * * *

[(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to such taxpayer if on any day during the taxable year the refinery runs of the taxpayer and such person exceed 50,000 barrels.]

(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and the related person for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.

* * * * *

(6) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT.—Paragraph (1) shall not apply to taxable years beginning after December 31, 2001, and before January 1, 2007, including with respect to amounts carried under the second sentence of paragraph (1) to such taxable years.

* * * * *

Subchapter N—Tax Based on Income from Sources Within or Without the United States

* * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

* * * * *

Subpart A—Foreign Tax Credit

* * * * *

SEC. 904. LIMITATION ON CREDIT.

(a) * * *

* * * * *

(h) **COORDINATION WITH NONREFUNDABLE PERSONAL CREDITS.**—In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, **[and 25B]** *25B, 25C, 25D, and 25E*). This subsection shall not apply to taxable years beginning during 2000 or 2001.

* * * * *

Subchapter O—Gain or Loss on Disposition of Property

* * * * *

PART II—BASIS RULES OF GENERAL APPLICATION

* * * * *

SEC. 1016. ADJUSTMENTS TO BASIS.

(a) **GENERAL RULE.**—Proper adjustment in respect of the property shall in all cases be made—

(1) * * *

* * * * *

(27) in the case of a residence with respect to which a credit was allowed under section 1400C, to the extent provided in section 1400C(h), **[and]**

(28) in the case of a facility with respect to which a credit was allowed under section 45F, to the extent provided in section 45F(f)(1) **[.]**,

(29) *to the extent provided in section 25C(e), in the case of amounts with respect to which a credit has been allowed under section 25C,*

(30) *to the extent provided in section 25D(e), in the case of amounts with respect to which a credit has been allowed under section 25D,*

(31) *to the extent provided in section 30B(g)(5),*

(32) *to the extent provided in section 25E(g), in the case of amounts with respect to which a credit has been allowed under section 25E,*

(33) *to the extent provided in section 179B(g),*

(34) *to the extent provided in section 179C(e)(1), and*

(35) *in the case of a facility with respect to which a credit was allowed under section 45I, to the extent provided in section 45I(d).*

* * * * *

PART III—COMMON NONTAXABLE EXCHANGES

* * * * *

SEC. 1033. INVOLUNTARY CONVERSIONS.

(a) * * *

* * * * *

(k) *SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.*—

(1) *IN GENERAL.*—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction—

(A) such transaction shall be treated as an involuntary conversion to which this section applies, and

(B) exempt utility property shall be treated as property which is similar or related in service or use to the property disposed of in such transaction.

(2) *EXTENSION OF REPLACEMENT PERIOD.*—In the case of any involuntary conversion described in paragraph (1), subsection (a)(2)(B) shall be applied by substituting “4 years” for “2 years” in clause (i) thereof.

(3) *QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.*—For purposes of this subsection, the term “qualifying electric transmission transaction” means any sale or other disposition before January 1, 2009, of—

(A) property used in the trade or business of providing electric transmission services, or

(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services, but only if such sale or disposition is to an independent transmission company.

(4) *INDEPENDENT TRANSMISSION COMPANY.*—For purposes of this subsection, the term “independent transmission company” means—

(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

(B) a person—

(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 823b) is not a market participant within the meaning of such Commission’s rules applicable to regional transmission organizations, and

(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

(5) *EXEMPT UTILITY PROPERTY.*—For purposes of this subsection—

(A) *IN GENERAL.*—The term “exempt utility property” means property used in the trade or business of—

(i) generating, transmitting, distributing, or selling electricity, or

(ii) producing, transmitting, distributing, or selling natural gas.

(B) *NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.*—Acquisition of control of a corporation shall be taken into account under this section with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

(6) *SPECIAL RULE FOR CONSOLIDATED GROUPS.*—In the case of a corporation which is a member of an affiliated group filing a consolidated return, such corporation shall be treated as satisfying the purchase requirement of subsection (a)(2) with respect to any qualifying electric transmission transaction engaged in by such corporation to the extent such requirement is satisfied by another member of such group.

(7) *ELECTION.*—An election under paragraph (1), once made, shall be irrevocable.

[(k)] (l) *CROSS REFERENCES.*—

(1) * * *

* * * * *

Subchapter P—Capital Gains and Losses

* * * * *

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

* * * * *

SEC. 1245. GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIABLE PROPERTY.

(a) *GENERAL RULE.*—

(1) * * *

(2) *RECOMPUTED BASIS.*—For purposes of this section—

(A) * * *

* * * * *

(C) *CERTAIN DEDUCTIONS TREATED AS AMORTIZATION.*—

Any deduction allowable under section 179, 179A, 179B, 179C, 190, or 193 shall be treated as if it were a deduction allowable for amortization.

(3) *SECTION 1245 PROPERTY.*—For purposes of this section, the term “section 1245 property” means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) * * *

* * * * *

(C) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted

basis in which there are reflected adjustments for amortization under section 169, 179, 179A, 179B, 179C, 185, 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, 193, or 194,

* * * * *

(b) EXCEPTIONS AND LIMITATIONS.—

(1) * * *

* * * * *

(9) *DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.*—At the election of the taxpayer, the amount of gain which would (but for this paragraph) be recognized under this section on any qualified electric transmission transaction (as defined in section 1033(k)) for which an election under section 1033 is made shall be reduced by the aggregate reduction in the basis of section 1245 property held by the taxpayer or, if insufficient, by a member of an affiliated group which includes the taxpayer at any time during the taxable year in which such transaction occurred. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary.

* * * * *

SEC. 1250. GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIABLE REALTY.

(a) * * *

(b) **ADDITIONAL DEPRECIATION DEFINED.**—For purposes of this section—

(1) * * *

* * * * *

(3) **DEPRECIATION ADJUSTMENTS.**—The term “depreciation adjustments” means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193) or by section 179B. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

* * * * *

Subchapter W—District of Columbia Enterprise Zone

* * * * *

SEC. 1400C. FIRST-TIME HOMEBUYER CREDIT FOR DISTRICT OF COLUMBIA.

(a) * * *

* * * *

(d) CARRYOVER OF CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and sections 23, 24, [and 25B] *25B, 25C, 25D, and 25E*), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

* * * *

Subtitle D—Miscellaneous Excise Taxes

* * * *

CHAPTER 31—RETAIL EXCISE TAXES

* * * *

Subchapter B—Special Fuels

* * * *

SEC. 4041. IMPOSITION OF TAX.

(a) DIESEL FUEL AND SPECIAL MOTOR FUELS.—

(1) TAX ON DIESEL FUEL IN CERTAIN CASES.—

(A) * * *

* * * *

(C) RATE OF TAX.—

(i) * * *

(ii) RATE OF TAX ON TRAINS.—In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be—

【(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995

【(II) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

【(III) 4.3 cents per gallon after October 31, 1998.】

(I) 3.3 cents per gallon after September 30, 2001, and before January 1, 2005,

(II) 2.3 cents per gallon after December 31, 2004, and before January 1, 2007,

(III) 1.3 cents per gallon after December 31, 2006, and before January 1, 2009,

(IV) 0.3 cent per gallon after December 31, 2008, and before January 1, 2010, and

(V) 0 after December 31, 2009.

* * * *

(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

(1) * * *

* * * * *

(3) *DIESEL FUEL USED IN TRAINS.*—*In the case of any sale for use (or use) after September 30, 2010, there is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—*

(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.

[(3)] (4) *TERMINATION.*— * * *

(A) * * *

* * * * *

SEC. 4042. TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) * * *

(b) *AMOUNT OF TAX.*—

(1) * * *

(2) *RATES.*—*For purposes of paragraph (1)—*

(A) * * *

* * * * *

[(C)] *The deficit reduction rate is 4.3 cents per gallon.*

(C) The deficit reduction rate is—

(i) 3.3 cents per gallon after September 30, 2001, and before January 1, 2005,

(ii) 2.3 cents per gallon after December 31, 2004, and before January 1, 2007,

(iii) 1.3 cents per gallon after December 31, 2006, and before January 1, 2009,

(iv) 0.3 cent per gallon after December 31, 2008, and before January 1, 2010, and

(v) 0 after December 31, 2009.

* * * * *

CHAPTER 32—MANUFACTURERS EXCISES TAXES

* * * * *

Subchapter A—Automotive and Related Items

* * * * *

PART III—PETROLEUM PRODUCTS

* * * * *

Subpart A—Gasoline

* * * * *

SEC. 4081. IMPOSITION OF TAX.

(a) TAX IMPOSED.—

(1) * * *

(2) RATES OF TAX.—

(A) IN GENERAL.—The rate of the tax imposed by this section is—

(i) * * *

* * * * *

(iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon (*19.7 cents per gallon in the case of a diesel-water fuel emulsion at least 14 percent of which is water*).

* * * * *

SEC. 4082. EXEMPTIONS FOR DIESEL FUEL AND KEROSENE.

(a) * * *

* * * * *

(f) CROSS REFERENCE.—

For tax on train and certain bus uses of fuel purchased tax-free, see section [4041(a)(1)] subsections (a)(1) and (d)(3) of section 4041.

* * * * *

Subpart C—Special Provisions Applicable to Petroleum Products

* * * * *

SEC. 4101. REGISTRATION AND BOND.

(a) * * *

* * * * *

[(e) CERTAIN APPROVED TERMINALS OF REGISTERED PERSONS REQUIRED TO OFFER DYED DIESEL FUEL AND KEROSENE FOR NON-TAXABLE PURPOSES.—

[(1) IN GENERAL.—A terminal for kerosene or diesel fuel may not be an approved facility for storage of non-tax-paid diesel fuel or kerosene under this section unless the operator of such terminal offers such fuel in a dyed form for removal for non-taxable use in accordance with section 4082(a).

[(2) EXCEPTION.—Paragraph (1) shall not apply to any terminal exclusively providing aviation-grade kerosene by pipeline to an airport.]

* * * * *

Subtitle F—Procedure and Administration

* * * * *

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

* * * * *

Subchapter B—Rules of Special Application

* * * * *

SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES, USED BY LOCAL TRANSIT SYSTEMS, OR SOLD FOR CERTAIN EXEMPT PURPOSES.

(a) * * *

* * * * *

(f) EXEMPT SALES; OTHER PAYMENTS OR REFUNDS AVAILABLE.—

(1) * * *

* * * * *

(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to—

(A) the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, and

[(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

[(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

[(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

[(iii) 4.3 cents per gallon after October 31, 1998.]

(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).

* * * * *

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) * * *

* * * * *

(1) NONTAXABLE USES OF DIESEL FUEL, KEROSENE, AND AVIATION FUEL.—

(1) * * *

* * * * *

(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term “nontaxable use” includes fuel used in a diesel-powered train. The preceding sentence shall not apply with respect to—

(A) the Leaking Underground Storage Tank Trust Fund financing rate under sections 4041 and 4081, and

[(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

[(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

[(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

[(iii) 4.3 cents per gallon after October 31, 1998.]

(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).

The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(A) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) REGULAR TAX RATE.—The term “regular tax rate” means the aggregate rate of tax imposed by section 4081 determined without regard to the parenthetical in section 4081(a)(2)(A).

(B) INCENTIVE TAX RATE.—The term “incentive tax rate” means the aggregate rate of tax imposed by section 4081 determined with regard to the parenthetical in section 4081(a)(2)(A).

[(m)] (n) REGULATIONS.—The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

[(n)] (o) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(D).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a).

[(o)] (p) GASOHOL USED IN NONCOMMERCIAL AVIATION.—Except as provided in subsection (k), if—

(1) * * *

* * * * *

[(p)] (q) CROSS REFERENCES.—

(1) * * *

* * * * *

CHAPTER 66—LIMITATIONS

* * * * *

Subchapter A—Limitations on Assessment and Collection

* * * * *

SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) * * *

* * * * *

(m) DEFICIENCIES ATTRIBUTABLE TO ELECTION OF CERTAIN CREDITS.—The period for assessing a deficiency attributable to any election under section 30(d)(4), 30B(g)(10), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

* * * * *

VII. DISSENTING VIEWS

We regret that earlier this year the Congressional Republican Leadership and the Bush Administration decided to enact a large tax reduction that did not reserve resources for other priorities. As a result of that decision, we believe that there is a substantial certainty that the tax reductions contained in the Committee bill will be funded, at least in part, by raiding the Medicare and possibly the Social Security trust funds. Therefore, we must oppose the Committee bill.

Whenever Democrats ask how a bill is going to be paid for, we are told that there is a slush fund in the Fiscal Year 2002 budget resolution that is available on a first-come, first-served basis. Speed, not serious legislative proposals, seems to govern the priorities! Which of the following priorities will not be funded if the Republican members of this Committee succeed in their current strategy of being first in line?

- \$300 billion for a Medicare prescription drug benefit.
- \$134 billion that Secretary of Defense Rumsfeld states is necessary just to maintain our current level of defense.
- \$200–300 billion for Defense modernization.
- \$73 billion for agriculture.
- \$6 billion for higher veterans benefits.
- \$14 billion reduction in SEC fees.
- \$50 billion for promised health insurance.
- \$82 billion to fully fund the new education bill.
- \$122 billion to extend expiring tax benefits.
- \$119 billion for President Bush's remaining tax cuts (e.g., health insurance, long-term care, housing).
- \$200–400 billion to address the AMT issue.
- \$138 billion to end tax-cut sunsets in the last bill.
- \$13 billion for the charitable tax incentives just passed by the House.

Historically, the Committees of the House have performed a vital function in the legislative process. It has been their role to analyze legislative proposals and to set priorities. In the case of this legislation, this Committee has abdicated its assigned role. The bill reported by the Committee is little more than a large number of introduced bills, stapled together. There was little attempt to analyze the effectiveness of the stapled provisions nor to set priorities.

It is worth pointing out that the Cheney energy task force presumably engaged in an analysis of the effectiveness of various energy tax proposals. Very few of the provisions in the Committee bill were recommended by the Cheney energy task force.

We also would like to comment on the role that the Treasury Department played in the markup of this legislation. In the past, the Treasury Department representatives have been quite frank in expressing their concerns during the Committee markups, particu-

larly when the proposal being analyzed was not recommended by the Administration. Their role often created no friends because it involved explaining the problems that could occur from Members' proposals. However, they played an important role in assuring that the Committee was aware of the consequences of the legislation. For whatever reason, in this Committee debate the Treasury representative refused to comment on any policy issues inherent in this bill.

Finally, we would like to comment on complexity. The markup of this bill occurred a day after the Oversight and Select Revenue Measure Subcommittees held a hearing on tax simplification. Clearly the message of that hearing was ignored. The Committee bill is extraordinarily complex. Its complexity is not limited to business taxpayers as suggested during the markup. Even individuals deciding what car to buy could be faced with tax rules so complicated that the Joint Committee staff declined to explain them.

If the Republican Members of the Committee were serious about tax simplification, they would reverse many of the provisions just enacted in the Bush tax cut. They would address the extraordinary complexity of the alternative minimum tax. They would not be considering additional legislation, that would create further complexities. Apparently, simplification has little constituency among the Republican members.

Republicans have a puzzling approach to the alternative minimum tax (AMT). Republicans on this Committee, and in the House, voted out a \$1.35 trillion tax cut that pushes up the number of individuals affected by the AMT to 35.5 million in 2010—nearly one-third of those who will owe positive income tax. Republicans were willing to effectively take away the deduction for state/local taxes and the personal exemptions from these taxpayers and to deny them all or a portion of the cuts in the regular income tax. Yet in the “energy” tax bill, new business preferences are extended to the AMT. Why were so many individuals left unprotected in the \$1.35 trillion tax cut, while the AMT was turned off for the few in this “energy” tax bill.

CHARLES B. RANGEL.
 EARL POMEROY.
 WILLIAM J. COYNE.
 BEN CARDIN.
 MICHAEL R. McNULTY.
 JIM McDERMOTT.
 XAVIER BECERRA.
 JOHN LEWIS.
 JERRY KLECZKA.
 SANDER LEVIN.
 ROBERT T. MATSUI.
 LLOYD DOGGETT.
 KAREN L. THURMAN.
 PETE STARK.
 JOHN TANNER.

VIII. ADDITIONAL VIEWS OF CONGRESSMAN EARL POMEROY

Parity for rural electric cooperatives

Given the growing demand for energy across the country, increasing attention is being focused on alternative sources of energy production, particularly renewable energy resources. In an effort to help stabilize volatile energy prices and enhance energy security, Congress has made tax incentives for wind and other renewable energy resources a priority. With coal generation providing 50 percent of our nation's electricity, a similar emphasis should be placed on clean coal technology to help reduce emissions from coal-fired utility plants.

In my state of North Dakota, both wind and coal are vital energy resources. North Dakota ranks first in wind energy production potential and has significant lignite coal reserves. Expanding the use of renewable technologies such as wind as well as enhancing existing resource use such as coal with new technologies will both be integral to our nation's long-term energy policy.

By including the maximum number of market participants in generation of renewable and clean energy production, we best equip ourselves to meet these goals. Unfortunately, the bill reported out of Committee leaves out an important segment of energy suppliers—public power suppliers and rural electric cooperatives, which serve 25 percent of the nation's power consumers. I urge modification of this legislation on the floor to provide equitable incentives for rural electric cooperatives and public power suppliers that currently are overlooked by this bill.

Importance of off-peak vs. peak electric costs

Growing demand for electricity in this country can be easily seen in the overloaded power grids that are struggling to meet demand during peak hours. Rolling brownouts and blackouts have become commonplace in California as a direct result of demand exceeding electrical supply during peak hours.

In addition to shortfalls in supply, the cost of electricity—to both the consumer and provider utilities—can cost as much as ten times more during peak hours (6 am–10 am and 5 pm–9 pm). “Super peaks” during extreme hot and cold weather can drive these costs even higher.

Given the potential cost savings of greater utilization of off-peak electricity, energy tax incentive legislation should seek to encourage technologies that take advantage of this opportunity. At least 12 utilities in 17 states offer pilot programs with time-of-day pricing for electricity, providing significant savings through off-peak rates.

A company in North Dakota has developed a technology that takes advantage of this pricing phenomenon. The Steffes Corpora-

tion currently markets Electric Thermal Storage heating equipment (ETS), that when combined with a heat pump, operates during off-peak electric rate periods to convert electricity into heat. The ETS unit then stores that heat in specially designed ceramic bricks, and then uses the heat during peak hours to heat air from the heat pump more efficiently and less expensively.

Peak and off-peak pricing distinctions are common in many industries, including public transportation fares, long-distance telephone rates, and cellular telephone rates. I strongly encourage my colleagues to support innovative technologies such as ETS that take advantage of off-peak electricity rates that can ultimately reduce the strain on the nation's power grids while simultaneously saving money for consumers.

EARL POMEROY.

